1	IAB Investigation
	Call For Service Report
2	Unitial DDD D. Co.
3	Initial BPD Report
4	Use of Force
5	Homicide Report
6	Warrant Printout
7	BFD Report
8	Alta Bates Report
9	Coroner's Report
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14	Prior Calls for Service
15	Policies



IAB ADMIN. #46

May 20, 2013

To:

Michael K. Meehan, Chief of Police

From:

Angela Hawk, Sergeant, Internal Affairs Bureau

Subject:

In-Custody Death of Xavier Moore

INCIDENT SUMMARY:

On February 12, 2013 at approximately 2349, BPD received a call from Hayes reporting a dispute with his roommate, Moore. Moore was reported to schizophrenic, off his medication, and under the influence of alcohol. Officer G. Brown and Officer B. Smith were dispatched to the call. Officer Tu attached himself to the call. The responding officers contacted Hayes in front of the apartment building. Hayes believed Moore should be placed on a psychiatric hold (WI 5150).

Moore was initially contacted at the front door of apartment #514. Moore made nonsensical statements to the officers. A records check showed an outstanding warrant for Hayes and a possible outstanding warrant for Moore. Officer Smith took custody of Hayes for the outstanding warrant. Brown decided to take Moore into custody for a WI 5150 evaluation and for the warrant. When Officer Brown and Officer Tu went to detain Moore in handcuffs, Moore became combative and the ensuing struggle continued into the apartment. Additional officers responded. Moore was subsequently detained using two sets of handcuffs and an ankle strap.

Once detained, BFD was requested. Moore started to have difficulty breathing. Moore then stopped breathing. Officers removed the handcuffs and started CPR on Moore. Moore was transported to Alta Bates Hospital by BFD where he was pronounced dead at 0134 hrs.

Alameda County District Attorney's Office was contacted, but did not conduct an investigation into this incident.

Berkeley Police Department Homicide Unit conducted an investigation into the incident.

The Alameda County Coroner's Office conducted an autopsy on Moore. The Coroner's report stated the cause of Moore's death was from acute combined drug intoxication with a contribution from morbid obesity and intrinsic cardiovascular disease.

to mean that Moore was going to stop resisting. Moore relaxed a little and they were able to get Moore handcuffed. They used two sets of handcuffs. Brown did not remember which officer arrived first. Brown recalled B. Smith, Mathis and Gardner being there. Brown confirmed none of the officers used their body weight on Moore's chest, neck or head. Someone grabbed Moore's legs.

Brown said a sergeant brought up a WRAP. She believed it was Phillips. They put on the ankle strap. Moore continued to struggle, but then just stopped. He was lying partially on his left side and partially on his stomach. Brown said she continued to watch Moore and didn't see his chest moving. Brown said, "I don't think he's breathing." They pulled him over completely on his side. Brown saw Moore's chest start to move and Brown confirmed he had a pulse. Moore shrugged his shoulders and shook his head a little bit. Brown continued to watch Moore and about a minute later, Moore's chest stopped moving. Brown checked for a pulse again and could not find one. They took the handcuffs off Moore and pulled him over on his back. The mattress was soft, so they pulled Moore to the floor to start CPR. Phillips got on the radio and requested BFD to respond Code 3. Tu started chest compressions. Brown said she held Moore's head to open his airway and requested a CPR mask. BFD arrived. Brown recalled Cardoza was also present when they started CPR.

Tu followed Moore to the hospital. Brown remained on-scene until Cardoza told her to return to the station and begin her report. Cardoza was the scene supervisor. Brown left when the ID tech arrived at the apartment.

Brown said she never struck Moore with her hand or an object, never kicked Moore, nor did she use any weapons. Brown never saw another officer strike Moore or use any weapons.

Brown said she had never had contact with Moore prior to the incident, but knew of him. Moore's mother had called approximately one month prior asking for a welfare check on her son. Moore's mother was concerned because Moore was reportedly depressed, going through a sex change, and a heavy drug user. Brown went to Moore's apartment, but no one was there.

STATEMENT OF OFFICER K. TU INTERVIEWED ON 02-13-13, RECORDED AND TRANSCRIBED

Tu said he was working Team 4, Beat 3 when the call came out. Tu responded to report of a disturbance between roommates at 2116 Allston Way. The apartment complex is known as the Gaia building. Tu arrived on-scene along with Brown and B. Smith. They contacted the reporting party (Hayes) in front of the apartment building. Hayes told them Moore should be placed on a 5150 hold. They followed Hayes to his apartment, number 514. Hayes opened the door with his key. Brown called into the apartment from the doorstep and Moore came to the front door. Brown started talking to Moore. Moore rambled and stated he was being followed by the FBI. Moore did not believe they were real police officers.

STATEMENT OF OFFICER BRANDON SMITH INTERVIEWED 02-13-13, RECORDED AND TRANSCRIBED

Smith said he was working patrol team 4, beat 5 when the call came out. He responded as a cover officer to a report of a 5150 off their medication at 2116 Allston Way #514. When he arrived, Brown and Tu were standing in front of the address. The reporting party (Hayes) came out and met them in front the apartment building. Hayes told them Moore had kicked him out of the apartment, was schizophrenic, off his medication, and was drunk and high. Hayes believed Moore needed to be taken to be 5150'd.

Hayes led them up to the apartment and unlocked the apartment door. Brown called out to Moore. Moore came to the door, stepped out onto the landing and appeared agitated and angry. Smith was concerned because they were five floors up and the landing was about four feet wide from the door to the railing. Moore became increasingly agitated and difficulty staying on topic. Smith said Moore rambled about the FBI. From Smith's observations, Moore appeared to be under the influence of some sort of narcotics. Moore's pupils were dilated and his hands were in constant motion, pulling at his clothes or scratching his body. Moore kept interrupting Brown.

Smith conducted the record's check on Hayes and Moore. Hayes had a \$5,000 warrant out of San Francisco. Moore had a caution code for PC 245. Smith wrote the information down on a field card and gave it to Brown. Smith said that on his way to the call, he had run Moore's name as a matter of routine. A 10K warrant came up, but Smith did not have Moore's birth date. The warrant did not come up when he ran it through Telecom. Smith went back to the car and looked at the warrant, but the birth year did not match up. Brown asked Smith to confirm the warrant on Hayes and transport him to jail. Smith walked Hayes downstairs and handcuffed him once they were in front of the building.

While Smith was searching Hayes, Brown broadcast over the radio that she needed more officers. Smith said it sounded like there was a "scuffle". Smith put Hayes in the back of his patrol car and went back to the apartment. When Smith got off the elevator, he could not see Brown and Tu on the landing. The apartment door was open and neighbors were pointing to the door. Smith went into the apartment. Moore was lying on his stomach on a mattress, Tu was lying on Moore's legs and Brown was on the left side of Moore trying to grab his arm. Tu had Moore's right arm behind his back, but was struggling to control Moore. Smith said Tu was "getting bucked up in the air."

Smith went to Moore's left side to try and gain control of his left arm. Moore left arm was tucked up under his body. Moore continued to ramble and yell. Smith said they repeatedly told him to stop resisting. They rolled Moore to the left. Moore then raised his left arm above his head. Brown grabbed Moore's wrist, but was unable to bring his arm back. Smith grabbed Moore's fingers and told Brown to move out of the way. Smith gained control of Moore's arm and pulled it behind his back. They used two sets of cuffs to restrain Moore's arms. As they were handcuffing Moore, two or three officers arrived. Moore was still kicking, screaming, cussing, and bucking. Tu moved off to Moore's right side. Sergeant Phillips and Cardoza arrived. Smith believed Phillips had a WRAP with

describe the actions of the other officers. He recalled hearing one of the officers say, "I got it." Mathis took this to mean that Moore was handcuffed, but he did not actually see Moore get handcuffed. At some point, Mathis also knew a WRAP had been brought up by either Cardoza or Phillips. Mathis specifically asked for the "leg strap".

Another officer brought over the strap and had it in a "loop". Mathis said it is "too difficult" to apply it that way, so Mathis had the officer take over his position. Mathis took the strap from the officer and placed it around Moore's ankles. Mathis did not recall who assisted with the strap. Moore still tried to kick, but soon after he was handcuffed and his legs were strapped he "just kind of stopped fighting." Mathis said that tends to be the case when an individual is restrained.

Someone requested a spit hood. Mathis had one in his car so he went down to get it and to also escort BFD up to the apartment. When Mathis left the apartment, Moore was still lying face down. Mathis also heard Brown say, "All this over a \$10,000 warrant." While waiting for the paramedics, Mathis heard over the radio that officers were starting CPR. Mathis waited until the paramedics arrived and then escorted them up to the apartment. Moore had been rolled onto the floor and was lying on his back. Tu was administering CPR. The paramedics took over. Mathis walked Tu outside the apartment because, "He was probably pretty spent."

Mathis did not nor did he see anyone strike Moore with a fist/kick/object, use a baton, deploy OC or use a firearm.

Mathis was then assigned to canvas the neighbors. Once Mathis finished with the canvas, he was assigned to security while the Crime Scene Technician (Jamison) photographed the apartment. Smith provided Mathis with the keys to the apartment. The keys belonged to Hayes. Once Jamison finished, Mathis locked the apartment door and then returned the keys to BPD jail.

Mathis had no prior contact with Moore.

STATEMENT OF OFFICER KASTMILER

INTERVIEWED 02-13-13, RECORDED AND TRANSCRIBED

Kastmiler was working on patrol team 4, beat 7 when he heard radio traffic from Brown requesting emergency cover. Kastmiler responded Code 3. Kastmiler arrived at basically the same time as Mathis and Gardner. They took the elevator up to apartment #514. The front door was open. They went inside the apartment and Kastmiler saw a very large male (Moore) lying on a mattress. Moore was on his stomach. Brown, Tu, and Smith were struggling to control Moore. Moore was kicking, flailing around, and trying to stand up.

Kastmiler grabbed Moore's arms. Moore was already in handcuffs, but was raising his arms up and trying to grab Kastmiler's wrist. Kastmiler said he placed his shin and knee on the back of Moore's left leg in effort to control Moore's movement. Moore was trying to kick officers.

Gardner recalled officers giving Moore commands similar to stop resisting, but he could not remember exactly what was said. Moore continued to struggle even though he was in restraints. They requested BFD to assist with the transport, because Moore was too big to fit in the WRAP. Phillips requested BFD. Gardner believes Moore was lying partially on his side at this point and they no longer had to hold him down. Gardner did not know why Moore was handcuffed or why he was being transported.

While waiting for BFD, Moore stopped breathing. Phillips requested BFD for a medical emergency. Gardner removed the handcuffs and they rolled Moore over on his back. Tu started chest compression. Gardner left the apartment and stood out on the landing to look for BFD. Gardner went back in and asked Tu if he needed a break. Tu said he was fine, so Gardner went back outside and discovered BFD had arrived. Gardner directed them to the apartment.

Gardner did not nor did he see any officer strike Moore with a fist, kick or object, use a baton or OC spray, or use a firearm.

STATEMENT OF SERGEANT PHILLIPS

INTERVIEWED ON 02-13-13, RECORDED AND TRANSCRIBED

Phillips was working as a patrol supervisor for Team 4 when she recalled Brown request for more cover over the radio. Phillips said the radio traffic seemed a "little bit choppy" and there was "screaming". Phillips knew Brown and other officers were on a "5150" call. Phillips responded Code 3 from the station.

Phillips and Cardoza arrived at the same time. They took the elevator up to the fifth floor to apartment #514. When they got off the elevator, Phillips saw a black male standing a couple of doors down from the apartment. She assumed he was either someone that knew about the circumstances or a neighbor. Phillips did not see any officers outside on the landing. The apartment door was open.

Phillips walked in and saw officers trying to restrain an individual (Moore). Moore was lying on a futon mattress on the floor of the living room. Moore was handcuffed with two sets of handcuffs. Moore was nude, had long braids, was African American, and weighed approximately 350-380 lbs. Phillips could not tell Moore's gender because he was lying on his stomach. Phillips recalled seeing Brown, Tu, Smith, Gardner, and Mathis. The officers were holding Moore's arms and legs. Brown was near Moore's head, but none of the officers held down Moore's head, neck, or chest. Smith and Tu were near his upper body, while Mathis and Gardner tried to gain control of Moore's legs. Moore was "kicking". Officers told Moore to "stop resisting" and "stop moving". An officer asked for a spit mask and another asked about the WRAP. Phillips said Cardoza had grabbed the WRAP from her car before they came upstairs. They started to take out the WRAP and Mathis yelled for the ankle strap. Mathis placed the ankle restraint around Moore's crossed ankles. Phillips requested a spit mask over the radio.

handcuffed Moore and used the ankle strap from the WRAP to control his feet. Moore continued "resisting" and was "still screaming". Cardoza did not remember what Moore was screaming.

Cardoza did not assist with the efforts to restrain Cardoza. Cardoza did not know why the officers were trying to restrain Moore.

Cardoza did not recall officers placing their bodies on top of Moore's head or neck area or on his chest area. Cardoza did not nor did he see any officer strike Moore with a fist, kick or object, use a baton or OC spray, or use a firearm.

Cardoza said BFD was requested for a medical evaluation and a gurney. The gurney was needed because of Moore's size and "combativeness". Cardoza left the apartment to meet with BFD and escort them up. When Cardoza left, Moore was still resisting.

Cardoza waited for BFD for less than a minute. As the fire department engine rolled up, Cardoza heard over the radio that officers were starting CPR on Moore. Cardoza accompanied the paramedics upstairs to the apartment. When Cardoza entered the apartment, Moore was lying on the floor on his back. Tu was doing chest compression on Moore. The paramedics took over and then transported Moore to the hospital. Cardoza notified the on-duty watch commander about the incident and of what occurred.

As the scene supervisor, Cardoza began making assignments, which included assigning officers to take statements and conduct a neighborhood check. He also requested an ID Tech to photograph the scene.

Cardoza had no prior contacts with Moore.

Cardoza completed the Use of Force Report and a Sergeant's log regarding the incident.

CIVILIAN WITNESSES

STATEMENT OF JOHN HAYES 02-13-13, WRITTEN STATEMENT

Hayes said he lives at 2116 Allston Way #514 with his roommate, Xavier Moore. Hayes has known Moore for about 15 years. Hayes reported Moore was a drug user of meth and crack and that he drank alcohol every day.

Hayes got home at around 5 p.m. Moore was high on speed and drunk. Hayes stated when Moore is under the influence, he wants to fight. Moore started to ask Hayes for money to buy more drugs and alcohol. Moore would not leave Hayes alone and they started to argue. Moore told Hayes to get out of the apartment. Hayes was concerned Moore was going to attack him, so he left.

The police showed up a few minutes later. Moore talked with officer at the doorway of the apartment. Sterling could hear Moore talking "gibberish" to the officers. Moore was talking about the government and not feeling safe. Moore was not making any sense. Sterling had a difficult time hearing the entire conversation because of the television and the radio.

Sterling said a scuffle started outside between the police and Moore. The scuffle continued inside the apartment. Officers repeatedly told Moore to "stop resisting". Moore was not cooperative with the officers. He kept resisting and speaking gibberish. Officer Brown told Sterling to get out of the apartment. Sterling left quickly. As he was leaving, Sterling worried Moore was going to "freak out" and attack him. Sterling described Moore as a "raging bull".

Sterling said Moore has a history of drug use. Most recently, Moore has been using meth, weed, and alcohol. Sterling said he recently assumed the role of Moore's caretaker. Sterling has known Moore for about 23 years.

SCENE

The incident occurred at the Gaia Building located at 2116 Allston Way in Apartment #514. The apartment building is a seven story complex with a central courtyard. The entrance doors to the apartment building face the interior courtyard.









The apartment was in disarray and cluttered with dirty clothes, garbage, dirty dishes, and spoiled food.









647 (b) – Prostitution, VC 10851 – Stolen Vehicle, , PC 273.5 – Domestic Violence, PC 242 – Battery, PC 148 – Resisting a Peace Officer.

Detective Grant confirmed with SFPD that Moore had an active \$10,000 misdemeanor warrant for PC 242 (Case No. 100547712/Warrant No. 720035). The date of birth entry was not correct in AWS. The day and month were correct, but the birth year was incorrect. The correct year is 1971 and the warrant had it listed as 1952. (See Attachment)

Since July 2012, BPD has had seven documented calls for service involving Moore. Primarily the calls are regarding Moore's mental health and drug related issues. The most recent call was on 01/11/13. Moore was transported by BFD to the hospital for difficulty breathing. (See Attachments)

TRAINING RECORDS

California Peace Officer Standards and Training requires four hours of arrest and control training every two years. At the time of the incident, Brown, Tu, Smith, Mathis, Kastmiler, and Gardner were in compliance with POST Defensive Tactics training standards. Additionally, Brown, Tu, Smith, Kastmiler all received WRAP training in May 2011. Officer Gardner received WRAP training in May 2012.

None of the aforementioned officers are CIT officers. The General Order regarding the Crisis Intervention Team (C-66) was issued on 01/24/13. Departmental training on CIT occurred on 01/31/13 and 05/13/13. Mathis attended Departmental training on 01/13/13. Smith, Kastmiler, and Tu attended Departmental training on 05/13/13.

ADDITIONAL

All of the involved officers were in full police uniform. This was confirmed by video surveillance footage obtained from the Gaia Buildings security cameras. The area of coverage is of the lobby, elevator, and the sidewalk area in front of the building. The video corroborated the officer's statements of when officers entered and left the premises. (See Homicide attachment)

Mobile Crisis was not on-duty at the time of the incident. Additionally, there were no CIT officers on-duty at the time of the incident.

Sergeant Hong contacted the Alameda District Attorney's Office and advised Deputy District Attorney Dalporto of the incident. Dalporto advised that the District Attorney's Office would not be sending an investigative team to respond.

Homicide conducted a neighborhood canvas. Neighbors reported yelling and screaming, but no additional eye witnesses were located. (See Homicide attachment)

To date, Homicide detectives have been unable to identify the individual called "Angel".





Login ID: ahawk

Print Date/Time: 03/07/2013 12:48

From CFS:

211 211

From Date: To Date:

02/12/2013 23:49

02/12/2013 23:49

CFS Type: Agency Type: All

Primary Incident: 2013-00008510

To CFS: Layer: All

Location:

Phone:

Status:

Call Type:

Police ORI:

CFS Number:

Additnl Loc Info:

Common Name:

211

Areas:

02/12/2013 23:49:41 Call Date/Time:

Nature Of Call:

Report Required:

Dispatch Time:

02/12/2013 23:54:32

Arrive Time:

02/12/2013 23:57:43

Clear Date/Time:

02/13/2013 14:08:06 Boatman, Clevon G

Created By:

Canceled:

No

Source:

911 Call

No

2

Priority: EMS ORI:

2116 ALLSTON WAY 514 BERKELEY, CA 94710 , Berkeley

Fire ORI:

01015

Person Information

Address Person

CA0010300

GAIA APT BUILDING

(415)368-1248

IN PROGRESS

Phone

Race

Sex

DOB

Age

SSN

Name

Type HAYES, JOHN REPORTING

PARTY



2

2

Login ID: ahawk

Print Date/Time: 03/07/2013 12:48

From CFS: To CFS:

211 211

211

From Date: To Date:

02/12/2013 23:49 02/12/2013 23:49 CFS Type: Agency Type: All

Layer: All

CFS Number:

Areas:

Call Date/Time:

ΑII

02/12/2013 23:49:41

Primary Incident: 2013-00008510

Narrative, Questionnaire Responses, TDD Text

Create Time	Created By	Narrative
02/13/2013 03:29:55	Mathis, Brian	Dispatch received by unit 3A6
02/13/2013 03:32:35	Brown, Gwendolyn	Dispatch received by unit 3A4
02/13/2013 03:36:50	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 03:43:36	Smith, Brandon C.	Dispatch received by unit 4A5
02/13/2013 04:38:57	Phillips, Amber	Dispatch received by unit \$17
02/13/2013 05:02:59	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 07:38:38	Brown, Gwendolyn	Dispatch received by unit 3A4
Dispositions		
Dianosition		Disposition Count

Disposition

Assist

Associated Areas

Description Area Type Code

Quadrant

041 Sta 2

Station Beat

4E

District

Police ORI

CA0010300

EMS ORI

Fire ORI

01015

Incident Number(s)

Incident Number(s)			D	Agency Type
Incident Number 2013-00008510	ORI Number CA0010300	Primary Unit Yes	Department Name Berkeley Police Department	Police
Unit(s)				
Unit	Primary Unit	Radio Number	Personnel	
4A9	No	4A09	06715 McIntosh	
4A7	No	4A07	09678 Kastmiler	
4A5	No	4A05	07154 Smith	
4A3	No	4A03	09123 Tu	
3A16	No	3A16	02450 Gardner	
3A14	No.	3A14	05902 Frankel	
3A6	No	3A06	05457 Mathis	
3A4	Yes	3A04	01241 Brown	
3A2	No	3A02	03136 Kaplan	
	No	S25	00870 Ross	
S25		S17	08180 Phillips	
S17	No ·	ID1	07056 Jamison	
D1	No		05386 Cardoza	
S31	No	S31	09300 Cald02a	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:48

From CFS: To CFS:

211

211

From Date:

02/12/2013 23:49 02/12/2013 23:49

CFS Type: Agency Type: ΑII

Layer: All

CFS Number:

211

To Date: Areas: Call Date/Time:

02/12/2013 23:49:41

Primary Incident: 2013-00008510

Call Log			
Log Date/Time	Entered By	Action	Description
02/13/2013 00:29:39	Kastmiler, Nikos	Narrative Added	Dispatch received by unit 4A7
02/13/2013 00:29:43	McClain, Tyrone J.	Unit Status Action	Unit 3A6 Enroute
02/13/2013 00:30:06	McClain, Tyrone J.	Unit Status Action	Unit 3A16 Dispatched
02/13/2013 00:30:07	Gardner, Timothy	Narrative Added	Dispatch received by unit 3A16
02/13/2013 00:30:07	McClain, Tyrone J.	Unit Status Action	Unit 3A16 Enroute
02/13/2013 00:30:10	McClain, Tyrone J	Unit Status Action	Unit S25 Dispatched
02/13/2013 00:30:11	Ross, Sean	Narrative Added	Dispatch received by unit S25
02/13/2013 00:30:12	McClain, Tyrone J	Unit Status Action	Unit S25 Enroute
02/13/2013 00:30:15	McClain, Tyrone J	Unit Status Action	Unit 4A7 Enroute
02/13/2013 00:30:41	McClain, Tyrone J.	Narrative Added	SEND MORE COVER
02/13/2013 00:33:01	McClain, Tyrone J.	Unit Status Action	Unit S17 Dispatched
02/13/2013 00:33:03	Phillips, Amber	Narrative Added	Dispatch received by unit S17
02/13/2013 00:33:10	McClain, Tyrone J	Unit Status Action	Unit S31 Dispatched
02/13/2013 00:33:11	Cardoza, Benjamin	Narrative Added	Dispatch received by unit S31
13/2013 00:33:21	McClain, Tyrone Ja	Unit Status Action	Unit S31 On Scene
02/13/2013 00:33:24	McClain, Tyrone J	Unit Status Action	Unit S17 On Scene
02/13/2013 00:33:27	McClain, Tyrone J.	Unit Status Action	Unit S25 On Scene
02/13/2013 00:33:50	McClain, Tyrone J.	Unit Status Action	Unit 3A6 On Scene
02/13/2013 00:33:58	McClain, Tyrone J	Unit Status Action	3A6
02/13/2013 00:34:16	McClain, Tyrone J	Unit Status Action	Unit 3A2 Dispatched
02/13/2013 00:34:17	Kaplan, Timothy D.	Narrative Added	Dispatch received by unit 3A2
02/13/2013 00:34:25	McClain, Tyrone J	Unit Status Action	Unit 3A2 On Scene
02/13/2013 00:34:53	McClain, Tyrone J	Narrative Added	BFD FOR GRNY
02/13/2013 00:36:11	McClain, Tyrone J	Unit Status Action	Unit 3A16 On Scene
02/13/2013 00:36:14	McClain, Tyrone J	Unit Status Action	Unit 4A7 On Scene
02/13/2013 00:41:19	McClain, Tyrone J.	Narrative Added	SUBJ NOT BREATHING STARTING CPR
02/13/2013 00:42:16	McClain, Tyrone J.	Narrative Added	BFD ADVISED
02/13/2013 00:54:34	McClain, Tyrone J.	Unit Status Action	Unit ID1 Dispatched
02/13/2013 00:54:35	Jamison, Catherine	Narrative Added	Dispatch received by unit ID1
02/13/2013 00:54:52	McClain, Tyrone J	Unit Status Action	Unit ID1 Enroute
02/13/2013 00:57:45	McClain, Tyrone J	Unit Status Action	Unit 4A9 Dispatched
02/13/2013 00:57:48	McIntosh, Elgin	Narrative Added	Dispatch received by unit 4A9
02/13/2013 00:57:48	McClain, Tyrone J.	Unit Status Action	Unit 4A9 Enroute
02/13/2013 00:58:29	McClain, Tyrone J	Narrative Added	1019 1015 W/ONE FOR A4
02/13/2013 00:58:34	McClain, Tyrone J.	Unit Status Action	1019 1015 W/ONE
02/13/2013 01:06:51		Unit Timer Expired	Unit ID1;Enroute
/13/2013 01:07:19	McClain, Tyrone J.	Unit Status Action	ENRT TO ABH
02/13/2013 01:09:47		Unit Timer Expired	Unit 4A9;Enroute
02/13/2013 01:11:00	McClain, Tyrone J.	Unit Status Action	1019 JAIL
02/13/2013 01:12:48	McClain, Tyrone J	Unit Status Action	Unit 4A9 On Scene

Page: 5 of 12



Login ID: ahawk

Areas:

Print Date/Time: 03/07/2013 12:48

From CFS: To CFS: 211 211

From Date: To Date: 02/12/2013 23:49 02/12/2013 23:49 CFS Type: Agency Type: All

CFS Number:

211

All

Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Call Log

Call Log			
Log Date/Time	Entered By	Action	Description
02/13/2013 04:41:57		Unit Timer Expired	Unit S17;Dispatched
02/13/2013 04:45:39	Parker, Steven R.	Unit Status Action	Unit 3A16 cleared from call
02/13/2013 04:45:48	Parker, Steven R.	Unit Status Action	Unit 3A6 cleared from call
02/13/2013 04:46:01	Parker, Steven R	Unit Status Action	Unit S25 cleared from call
02/13/2013 05:02:59	Tu, Kenneth	Narrative Added	Dispatch received by unit 4A3
02/13/2013 05:03:16	Tu, Kenneth	Call Updated	Dispositions Changed
02/13/2013 05:03:16	Tu, Kenneth	Unit Status Action	Unit 4A3 cleared from call
02/13/2013 05:04:00	McClain, Tyrone J.	Unit Status Action	Unit S17 On Scene
02/13/2013 07:38:38	Brown, Gwendolyn	Narrative Added	Dispatch received by unit 3A4
02/13/2013 10:01:29	Larks, Rena	Unit Status Action	Unit 3A4 cleared from call
02/13/2013 10:01:41	Larks, Rena	Unit Status Action	Unit S17 cleared from call
02/13/2013 14:08:05	Krocil, Lucie	Call Updated	Dispositions Changed
02/13/2013 14:08:06	Krocil, Lucie	Call Cleared	
03/04/2013 16:14:22	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident
04/2013 16:19:47	Tan, Eduardo J	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident
u3/05/2013 10:35:45	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident
03/05/2013 14:16:42	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident



Login ID: ahawk

Print Date/Time: 03/07/2013 12:48

From CFS: To CFS:

211 211

211

From Date: To Date:

02/12/2013 23:49 02/12/2013 23:49 CFS Type:

Layer: All

CFS Number:

Areas: Call Date/Time: 02/12/2013 23:49:41

ΑII

Agency Type:

Primary Incident: 2013-00008510

ΑII

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
)2/13/2013 02:28:18	Parker, Steven R.	ID1	Available	Unit Cleared	Unit cleared from call	
02/13/2013 02:28:18	Parker, Steven R.	ID1	Available	Unit Status Change		
02/13/2013 03:49:52	Kastmiler, Nikos	4A7	Available	Unit Status Change		
02/13/2013 03:49:52	Kastmiler, Nikos	4A7	Available	Unit Cleared	Unit cleared from call	
02/13/2013 03:49:52	Kastmiler, Nikos	4A7	On Scene	Disposition Added	Officer Assisted	GAIA APT BUILDING 2116 ALLSTON WAY 514, Berkeley
02/13/2013 03:50:42	Smith, Brandon C.	4A5	Available	Unit Status Change		
02/13/2013 03:50:42	Smith, Brandon C.	4A5	Available	Unit Cleared	Unit cleared from call	
02/13/2013 03:50:42	Smith, Brandon C.	4A5	On Scene	Disposition Added	Officer Assisted	1019 JAIL
02/13/2013 04:11:41	McClain, Tyrone J.	S31	Available	Unit Cleared	Unit cleared from call	
2/13/2013 04:11:41	McClain, Tyrone J	S31	Available	Unit Status Change		
02/13/2013 04:11:48	McClain, Tyrone J.	S17	Available	Unit Cleared	Unit cleared from call	
02/13/2013 04:11:48	McClain, Tyrone J.	S17	Available	Unit Status Change		
02/13/2013 04:38:57	Phillips, Amber	S17	Dispatched	Unit Status Change		2116 ALLSTON WAY 514, Berkeley
02/13/2013 04:41:57	default_nws	S17	Dispatched	Unit Timer Expired		2116 ALLSTON WAY 514, Berkeley
02/13/2013 04:45:39	Parker, Steven R	3A16	Available	Unit Cleared	Unit cleared from call	
02/13/2013 04:45:39	Parker, Steven R.,	3A16	Available	Unit Status Change		
02/13/2013 04:45:48	Parker, Steven R.,	3A6	Available	Unit Cleared	Unit cleared from call	
02/13/2013 04:45:48	Parker, Steven R.	3A6	Available	Unit Status Change		
02/13/2013 04:46:01	Parker, Steven R.	S25	Available	Unit Cleared	Unit cleared from call	
02/13/2013 04:46:01	Parker, Steven R.	S25	Available	Unit Status Change		
02/13/2013 05:03:16	Tu, Kenneth	4A3	Available	Unit Status Change		
02/13/2013 05:03:16	Tu, Kenneth	4A3	Available	Unit Cleared	Unit cleared from call	
02/13/2013 05:03:16	Tu, Kenneth	4A3	On Scene	Disposition Added	Alcohol Present	1019 WRITING
02/13/2013 05:04:00	McClain, Tyrone J	S17	On Scene	Unit Status Change		
02/13/2013 10:01:29	Larks, Rena	3A4	Available	Unit Cleared	Unit cleared from call	
				Unit Status		



Login ID: ahawk

Print Date/Time: 03/07/2013 13:12

From CFS: To CFS:

261 261

From Date: To Date:

02/13/2013 08:05 02/13/2013 08:05 CFS Type: Agency Type: All

Layer: All

CFS Number:

Areas: 261 Call Date/Time:

All

02/13/2013 08:05:50

Primary Incident:

2013-00008536

Location:

2116 ALLSTON WAY 514 BERKELEY, CA 94710, Berkeley

Dispatch Time:

02/13/2013 08:05:50

Additnl Loc Info:

Arrive Time:

02/13/2013 08:05:50

Common Name:

GAIA APT BUILDING

Clear Date/Time:

Created By:

02/13/2013 09:41:04

Phone:

Nature Of Call:

Canceled:

Larks, Rena

Call Type: Status:

Report Required: Priority:

No

Source:

Officer Initiated

Police ORI:

CA0010300

IN PROGRESS

EMS ORI:

Fire ORI:

01015

Narrative, Questionnaire Responses, TDD Text

Create Time

Created By

Narrative

02/13/2013 08:05:59

Pierantoni, Casimiro

Dispatch received by unit 1A2

02/13/2013 08:11:46

Larks, Rena

10-88

Dispositions

Disposition

Disposition Count

Associated Areas

Area Type Code

Quadrant

041

Station

Sta 2

Beat

4E

District

Police ORI

CA0010300

Description

EMS ORI

Fire ORI

01015

Incident Number(s)

Incident Number 2013-00008536

ORI Number CA0010300

Primary Unit

Yes

Department Name

Agency Type

Police

Unit(s)

Unit S20

Primary Unit Yes

Radio Number S20

Personnel 00862 Rateaver

Berkeley Police Department

1A2

No

1A02

01887 Pierantoni



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO.
2013-00008510

ASSOCIATED BPD CASE #(S)

DVR

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PRIMARY OFFENSE JOCCURRED INCIDENT

BERKELEY POLICE DEPARTMENT

CASE NO.

2013-00008510

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POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 3 OF 5

PRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

CASE NARRATIVE

REPORTING OFFICER
Brown, Gwendolyn

02/13/2013 02:11:59

Summary:

RP Hayes called BPD to report he and roommate Moore had a verbal dispute. Hayes said Moore was schizophrenic, off his meds, and had kicked him out of the apartment. Hayes also reported that Moore possibly needed to be 5150ed. Officers Tu, Smith, and myself contacted Moore in the doorway of his apartment. After interviewing him and being told that he had a \$10.000 dollar warrant. The decision was made to physically detain Moore for a 5150 evaluation and a possible warrant arrest. Moore resisted being handcuffed. A struggled ensued. Moore subsequently stopped breathing. BFD transported him to Alta Bates Hospital. Moore was pronounced dead at 0134 hours.

Scene:

The Gaia Building is located at 2116 Allston Way. This is multi-level, multi-apartment building. Apartment #514 is a one bedroom, located on the fifth floor, on the north side of the building. Upon entering, there is a bathroom to south. Straight ahead (west) is the living room. In the living room, on the north wall was a large standing lamp. Just west of it, on the floor, was a twin size mattress. South of the mattress was a chair. The kitchen is southwest of the living room. West of the kitchen, is the bedroom. The struggled started outside the front door and ended on the mattress, in the living room. The apartment was in disarray prior to BPD officers arrival. Suspect Moore was dressed in a animal print strapless, tube type top, and a animal print wrap around skirt. He was wearing no underwear. During the struggle Moore's skirt ended up around his ankles, and he was primarily nude. I saw no visible injuries on Moore. While BFD was rendering aid to Moore, BFD moved the mattress and bedding into the bathroom.

Statements:

RP Hayes said he and Moore are roommates and have known each other for 15 or more years. He went on to say that Moore has uses crack cocaine and meth on a regular basis since knowing him. Additionally, Moore drinks alcohol almost every day, to get drunk.

Hayes said today he arrived home around 5 or 6 pm. Moore was high on speed and had been drinking. He asked for money to purchase more drugs and alcohol. Hayes refused. The two argued and Moore told him to get out. Fearing for his safety, Hayes left the apartment and called BPD. (See attached statement)

Witness Sterling, Moore's caregiver, said between 10:30 and 11:00 pm he and Hayes arrived at Moore's apartment. Moore's girlfriend, only known as "Angel" was there. He (Sterling) started preparing food for Moore. During that time he observed Moore's demeanor and described it as being agitated and upset. Sterling said Moore was pacing the floor, smoking weed, and drinking alcohol. Sterling said he asked Hayes if Moore been taking his prescribed medication for schizophrenia. Hayes told him that Moore had not taken his meds for awhile.

Sterling said Moore continued talking but was making no sense. Sterling said Moore wanted more drugs and started arguing with Angel about meth. Moore told Angel to get out and threw a chair at



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 4 OF 5

PRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

200

CASE NARRATIVE CONTINUATION

REPORTING OFFICER
Brown, Gwendolyn

DATE / TIME WRITTEN 02/13/2013 02:11:59

her. Sterling said Moore was angry because he thought Angel had drugs and was holding out on him. Angel left and Moore started arguing with Hayes. At the same time, Moore was also talking to him. Sterling said Moore was out of breath and having difficulty breathing. He was attempted to calm him down then BPD arrived.

Sterling said he remained inside the apartment while BPD talked to Moore who was standing in the doorway. He said Moore was "telling the officers jibberish about the government and not feeling safe. Sterling said he could not understand Moore because he wasn't making any sense. He also said he had never seen Moore act like that or talk like that before, so he knew something was seriously wrong with Moore.

Sterling said Moore and the officers suddenly started scuffling outside the apartment. He said Moore was not cooperating with the police at all. He said he heard the police telling Moore to "stop resisting," but he wouldn't. "He kept resisting and speaking jibberish." Sterling said he was asked to wait outside. He left the apartment, quickly because he was afraid Moore was going to freak out and attack him. Sterling said Moore was "running away from the officers like a raging bull" and he had to get out of the way to avoid getting trampled. Sterling closed by saying that he has known Moore for about 23 years and knew that Moore used crack cocaine. He thought Moore recently stopped using cocaine and substituted it with meth, weed, and alcohol, that he uses regularly. (See attached statement)

Investigative Narrative:

On 2-12-13, Officer Smith and I were dispatched to 2116 Allston Way #514 for a PC 415 call. Officer Tu #38 attached himself to the call. Officer Tu and I were the first to arrive on the scene. We attempted to gain entry into the secured building but were initially unsuccessful. I had the dispatcher contact RP Hayes to let us in. Shortly there after, Hayes walked up and said he had called. Hayes went on to say his roommate Moore was schizophrenic, off his meds, and had kicked him out of the apartment because he would not give him money to purchase drugs and alcohol. Hayes said he left the apartment because he thought Moore was going to attack him and that he feared for his safety. At that time, Officer Smith arrived. He asked me if the suspect's name was Xavier Moore. I responded "Yes." Smith then said Moore had a \$10,000 dollar want out of San Francisco. I told him Moore recently relocated to Berkeley from San Francisco.

Officer Tu, Officer Smith, Hayes and I went upstairs to apartment 514. Hayes unlocked and opened the door. I directed him to step away. I called out to Moore from the doorstep. Moore came to the door and I questioned him as to what was going on with him and roommate Hayes. Moore was unable to answer my questions. He appeared to have difficulty focusing. Moore became increasingly angry and kept rambling something like the FBI was following him and that we were not real police officers. Moore's behavior suddenly changed. He started acting as if he knew me personally. He called by the names, Michelle, Carol, and Wanda. When I would tell him that I was not either of those people. His response was, "Oh I see them behind you." Moore was making statements about dinosaurs and people, that did not make any sense.

While talking to Moore, Officer Smith did a computer check on Hayes. He advised me that Hayes



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

2013-00008510

PAGE 5 OF

PRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

CASE NARRATIVE CONTINUATION

REPORTING OFFICER
Brown, Gwendolyn

02/13/2013 02:11:59

had a outstanding warrant. I had him confirm it. I arrested Hayes on warrant and directed Officer Smith to transport him to the BPD jail. I then made the decision to physically restrain Moore for a 5150 evaluation and the \$10,000 dollar warrant that I thought Officer Smith had confirmed. I informed Moore that he had a warrant and that he would be going to the police department. Moore became very angry and said he was not going. He then said he was going inside to call the FBI to clear up the matter. I told him he could make the call from the station. He continued saying he would call the FBI from his apartment. I told Moore that he needed to come with us. He flat out refused. He was unresponsive to my verbal commands.

Moore's behavior became increasingly aggressive. I signaled to Officer Tu to go hands on and assist me in placing Moore in handcuffs. Officer Tu grabbed Moore's left wrist. I simultaneously grabbed Moore's right wrist, in an attempt to apply a control hold and put the handcuffs on. Moore immediately started yelling, "No, No!" He attempted to pulled away. Officer Tu and I maintained our grasps. Moore continued to violently pull away. While doing so, he pulled Officer Tu and me into his apartment. We all fell on a mattress that was on the floor, against the east wall. During our struggle to handcuff Moore, I called for additional officers/Code 3 Cover. At the same time, I noticed a BMA, later identified as witness Sterling, in the apartment. For officer safety reasons, I ordered him out of the apartment. Officer Tu and I continued struggling to restrain Moore who was violently resisting. I ordered him to stop. There was no compliance. Officer Tu and I managed to get one hand cuffed. Moore had the other hand under his body and he was laying on his stomach. BPD officers Mathis #80, Gardner #121, and Castmiler #104, arrived and helped us cuff the other wrist. Due to Moore's large size, two sets of cuffs were used.

Moore continued to violently resists. A request for the wrap restraint device was made. It arrived, but was to small. Officers were able to use the ankle strap to secure Moore's ankles. Moore continued to violently resist, a request for BFD restraints was made. Moore continued to resist for a brief time before he yelled, "Ok, Ok!" He appeared to be calming down. He suddenly stopped resisting. I looked at his chest and saw no movement. We rolled him on his side. I saw that he was breathing, he had a pulse and he moved his head. Approximately one minute later Moore's chest stopped moving. I checked for a pulse. Moore was no longer breathing and he had no pulse. BFD was requested Code 3. We immediately removed the handcuffs, laid him on his back and began CPR and was relieved by BFD. BFD Engine 5/Medic 1 transported Moore to Alta Bates hospital. Dr Benjamin Bonnes pronounced time of death at 0134 hours. ID Tech Jamison # 452 processed the scene.

Officers Tu, Smith, Gardner, and Mathis supplemental reports are attached. RP Hayes and Witness Sterling's statements are attached.

NARR

CONTINUATI





POLICE REPORT

SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 1 OF

Phillips, Amber

DATE ! TIME WRITTEN

02/13/2013 04:34:39

On 02/13/13 at about 0030hrs, I responded to 2216 Allston Way apartment # 514, because officers were requesting "Code 3 cover." I arrived on scene with Sgt Cardoza # S-31 at about 0033 hrs, and we both entered apartment #514 together. When I entered the apartment, I saw Ofc Tu #38, Ofc Brown #16, Ofc Gardner #121 and Ofc Mathis #80, attempting to restrain an individual on a mattress on the floor of the living room area. The person they were restraining, who was later identified as Moore, was lying on his stomach with his hands cuffed behind his back. Moore was violently kicking at officers, particularly Ofc Mathis, who was attempting to gain control of his feet. Sgt Cardoza deployed the WRAP restraint device and I provide the ankle strap to Ofc Mathis, who secured Moore's ankles. Officers did not attempt to place the leg and chest pieces of the WRAP restraint device on Moore, due to his large size (approximately 350+lbs). At about 0034hrs, I contacted BPD Dispatch via radio and requested that BFD respond to our location with a gurney. I requested the gurney because it was apparent that officers would be unable to move or lift Moore due to his large size, especially since his apartment was on the fifth floor. Once Moore calmed down, officers rolled him on left side and Ofc Brown confirmed he was breathing and had a pulse. Although Moore was breathing, it appeared he was having difficulty. I advised BPD Dispatch that we would also need BFD paramedics because Brown was having difficulty breathing.

At around to 0041hrs, Ofc Brown noticed that Moore was no longer breathing and did not have a pulse. At this time, I advised BPD Dispatch that Moore was not breathing and officers would be starting CPR. Officers immediately removed the handcuffs from Moore and placed him on his back. Ofc Tu gave Moore chest compressions until BFD arrived on scene and took over. Once Moore was transported to Alta Bates Hospital by BFD, I assisted Sgt Cardoza in managing the scene and did the following:

Sgt Cardoza and I directed Ofc Tu to follow BFD to Alta Bates Hospital to get an update on Moore's condition.

I directed Ofc McIntosh to conduct a canvass of the fifth floor or 2116 Allston Way to determine if any neighbors had contact Moore prior to our arrival.

I directed Ofc Kastmiler to take a written statement from Sterling.

I contacted Ofc Smith via phone while he was in the BPD jail and directed him to take a written statement from Hayes.

At about 0204hrs, Sgt Cardoza took over the scene as the Scene Supervisor and I was released from the scene.





POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

O PAGE

REPORTING OFFICER
Smith, Brandon

DATE / TIME WRITTEN

2/12/2013 23:49

CASE SUPPLEMENTAL:

On 2-12-13 at approx 2354hrs I was dispatched to 2116 Allston Way Apt 514 as a cover officer to a report of 5150 off their medication. I arrived on scene and met with Ofc Brown #16 and Ofc Tu # 38 IFO the address. The RP (Hayes) walked up to us and let us in to the apartment complex. Hayes said that his roommate (Moore) had kicked him out and needed to be 5150'd.

I went upstairs with Ofc Brown, Ofc Tu and Hayes. Hayes unlocked the apartment front door and Ofc Brown called out to Moore. Moore came to the door and stepped out onto the landing and appeared very agitated and angry. Ofc Brown began speaking with Moore and after Ofc Brown verbally identified him I conducted a records check of Moore and Hayes with Telecom. During this time Moore grew increasingly agitated and had difficulty staying on topic. Moore was at times incoherent and rambled on about the FBI watching him.

Hayes was found to have a \$5,000 warrant out of San Francisco. I told Hayes about his warrant and that he was going to be arrested. Hayes was cooperative and I walked him downstairs. I placed Hayes in handcuffs and began to search him incident to arrest when over the police radio I heard Ofc Brown request code 3 cover. I placed Hayes in the back seat of my patrol car and ran back upstairs to apartment 514.

Moore was on the bed on his stomach resisting Ofc Tu and Ofc Brown. Ofc Tu had Moore's right wrist in a handcuff and Ofc Brown was trying to gain control of Moore's left wrist. I helped Ofc Brown get Moore's left arm behind his back so that he could be placed in handcuffs. During the incident Moore continued to struggle and pull his arm away from us.

As soon as Moore was placed into handcuffs other officers arrived and I went back downstairs to ensure that Hayes was still in the back of my vehicle and ok. I removed Hayes and searched him removing all of his property from his person and placed it into a paper bag. Ofc Kaplan transported Hayes to the Berkeley Jail and booked him for his warrants.

I contacted Hayes in the Berkeley Jail and obtained a signed written statement from him.

Hayes said in summary that he lives with Moore at 2116 Allston Way #514 and that they have known each other for about 15 or more years. He said that Xavier has used many drugs on a regular basis since he has known him and that he mostly uses crack and methamphetamine as well as drinks alcohol daily to get drunk. He said that on 2-12-13 when he returned home around that Moore was high on methamphetamine and was drunk. He said that when Moore is high and drunk he is mean and wants to fight. He said that Moore asked him for money to buy high and drunk he told Moore no. Hayes said that Moore became very angry and wouldn't more alcohol and he told Moore no. Hayes said that because he has a temper he decided to leave him alone. They were arguing and Hayes said that because he has a temper he decided to leave him alone. Moore then told him to just leave. Hayes said that he then called the police try and ignore Moore. Moore then told him to just leave. He said that Moore was acting who took him to the apartment where they spoke with Moore. He said that Moore was acting "ziggity boom like a mother fucker". When asked what that meant Hayes said that "he was acting like he does when he's really high and drunk." Hayes said that Moore had threatened him earlier like he does when he's really high and drunk." Hayes said that Moore had a history and thought that Moore would attack him and that is why he left. He said that Moore had a history



BERKELEY POLICE DEPARTMENT POLICE REPORT

SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO. 2013-00008510



REPORTING OFFICER

Smith, Brandon

DATE / TIME WRITTEN

2/12/2013

23:49

of violence and he had stabbed someone in San Francisco a few years prior. See Hayes signed written statement for further.

Nothing further to report.

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POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

2013-00008510



REPORTING OFFICER Kastmiler, Nikos DATE / TIME WRITTEN

2/12/2013

23:49

SUPPLEMENTAL REPORT:

On 2/13/13 at approximately 0030 hours I heard Ofc. Brown say over the radio to "send emergency cover". I responded to 2116 Allston WAY #514 to assist.

I arrived on scene and entered the apartment. I observed a very large male, later identified as Moore, laying face down on top of a mattress with Officers struggling to control him. Ofc. Tu #38, Ofc. Brown #16, and Ofc. B. Smith #3 were controlling Moore's arms and legs as he struggled to break free from their control. Moore was handcuffed and I assisted in controlling Moore's arms and preventing him from getting up. I remained with Moore while waiting for BPD Officers to bring a WRAP device for Moore. While we were deploying the WRAP Moore stopped struggling. We rolled Moore on to his left side. About a minute later, Ofc. Brown stated that Moore had stopped breathing. We checked for a pulse and noticed that he no longer had a pulse. When we discovered this we immediately removed Moore's handcuffs and laid him flat on his back. We began doing CPR on Moore until BFD arrived on scene and began emergency treatment.

I remained on scene and contacted Sterling. Sterling was inside the apartment with BPD Officers and Moore during the initial incident. Sterling provided a written statement about the incident.

(SEE ATTACHED WRITTEN STATEMENT)

Α R R Α T ٧ Ε





BERKELEY POLICE DEPARTMENT POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO. 2013-00008510

REPORTING OFFICER

Tu, Kenneth

DATE / TIME WRITTEN 23:49 2/12/2013

SUPPLEMENTAL

SUPPLEMENTAL INVESTIGATION: On 2/12/13 at approximately 2357 hours, I responded to assist with a report of a disturbance between roommates at 2116 Allston Way, the Gaia Apartment Building. I arrived on scene with BPD Officers Brown #16 and Smith #3. We contacted the reporting party, Hayes, in front of the building. Hayes reported that his roommate, Moore, was schizophrenic and off of his medications, and had kicked him out of the apartment. Hayes stated that Moore needed to be placed on a WI 5150 hold.

Hayes took us up to his residence, apartment #514. Hayes opened the front door with his key, and Officer Brown called into the apartment from the doorstep.

Moore came to the front door, and Officer Brown initiated conversation with him. I stood by as a cover officer to keep Hayes separated from Moore. During the contact, Moore became increasingly agitated, and made numerous paranoid, rambling statements. Moore repeatedly stated that he was being followed by the FBI, and that he did not believe that we were real police officers.

During the investigation, Officer Brown placed Hayes under arrest for an active warrant, and directed Officer Smith to transport him from the scene. Officer Smith placed Hayes in handcuffs, and then escorted him downstairs to his patrol vehicle. I remained on scene with Officer Brown.

Officer Brown asked Moore to come outside to speak to her. Moore agreed, and stepped outside of the apartment onto the exterior walkway. Officer Brown then informed Moore that he was being detained for a warrant. Moore became extremely upset and was unresponsive to her verbal commands. Officer Brown then signaled me to attempt to detain Moore in handcuffs, so I grabbed him by the left wrist with both of my hands. Moore immediately began screaming and violently pulling away, and then ran back into the apartment, pulling Officer Brown and I in with him as we tried to detain him.

A person later identified as Sterling was inside of the apartment's living room at the time, and for the safety of all parties present, Officer Brown directed him to leave the apartment. Sterling complied and went outside.

Moore was able to pull himself out of my grasp, and fell on his left side onto the mattress in the living room. He then began kicking me as I attempted to place his right arm in a control hold. I sprawled onto his hip in an attempt to prevent him from further kicking me, and gained control of his right arm by placing it in a rear wrist lock. Moore rolled onto his stomach with his left arm under his body, preventing us from controlling that arm.

Officer Brown requested Code-3 cover, and several other BPD units responded to assist. Moore continued to violently resist by trying to buck me off of him, kicking me, and trying to pull his right arm away from me. After struggling for several minutes, we were able to gain control of Moore's left arm and place him in handcuffs. Due to his size, we secured his arms behind his back with two sets of handcuffs.



POLICE REPORT

SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO. 2013-00008510



REPORTING OFFICER Mathis, Brian DATE / TIME WRITTEN 23:49 2/12/2013

Case Supplemental:

On 2-13-13 at aprox. 0030 hrs I heard Ofc Brown #16 broadcast a request for additional units to 2116 Allston #514. I responded code three to the scene. Upon entering the apartment I observed Ofc Brown, Ofc Tu #38 and Ofc Smith #3 struggling to control a very large person on the apartment floor. I grabbed both of the subjects ankles in an attempt to control the legs because the subject was kicking at the officers. I crossed his ankles, trying to hold them down, but got kicked off. I re-acquired my grip and was able to stop the subject from kicking. I was given the ankle restraint strap from The Wrap and applied it to the subjects ankle with assistance from another officer.

I left the apartment to return to my patrol vehicle to retrieve spit hoods and escort BFD upon their arrival. I heard a broadcast that CPR was being preformed in the apartment prior to BFD's arrival on scene. I accompanied BFD back upstairs to #514.

I was assigned by Sgt Cardoza #S-31 to attempt contact with residence of the surrounding apartments.

which is next door to the west of #514, I got no answer.

which is next door to the east of #514, I contacted roommates Gabriela Carvalho and Jorge Toledo. They both told me that they had been watching television when they heard three very loud thumps on the wall from #514 sometime around 2300 hrs. The thumps were loud enough to startle Carvalho and Toledo, but they heard nothing else over their TV until the police arrived sometime just after 2400 hrs. Toledo also told me that, "She (Xavier Moore) has knocked on our door a couple times and offered me recreational drugs."

which is next door to the east of #513, the residents there told me that they had not heard anything "until all the police arrived."

I stood by as ID Tech Jamison #452 took photos in #514. When she was finished I locked the door and returned the keys to the BPD jail.

Case Disposition:

As set

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POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 1 OF

Gardner, Tim

DATE / TIME WRITTEN

2/12/2013 23:49

SUMMARY:

On the listed date, just after TOR, I heard a broadcast of additional units needed for a call at 2116 Allston way, #514. It was apparent from the broadcast that BPD officers were involved in a struggle with a violent subject. I responded Code Three and when I reached the apartment, I saw several BPD officers struggling to take an extremely large and violently resisting partially naked person into custody. The person appeared to be approximately four hundred pounds and it took several officers combined efforts to control his hands. Along with several other officers who arrived with me, we finally managed to place him into handcuffs and called for BFD to respond to assist with transporting him. After we had successfully placed him in handcuffs, it appeared he had suddenly stopped breathing. I assisted with immediately uncuffing him while other officers requested emergency medical assistance and began chest compressions. BFD arrived shortly thereafter and began efforts to revive the person.

PARRATIVE



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO

2013-00008510

PAGE 1 OF

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Ja	misc	on, Cathe	rine			02/18/20	13	23:40					Case Siline Pag	

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

Buccal:

2013-00008510

1

02/18/2013 23:40 Jamison, Catherine Case Number: 2013-08510 Type of Call: 415 Victim: Weather: Officer at Scene: S-25 & S-31 Date: 02-13-13 Time Completed: 0142 hrs Time Arrived: 0105 hrs Location: 2116 Allston Way # 514 Number of Photos: 85 Camera: Nikon D80 & Nikon D90 Video Camera: Sony DCR-SR82 HDD video camera GSR: **Elimination Prints:**

DNA/Swab:

DATE / TIME WRITTEN

Other:

Evidence:

Latent Prints:

At approximately 0105 hrs I arrived at the above listed location, upon arrival I had a Nikon D90 digital camera in my possession. I spoke to Sergeant Ross # S-25 who was standing outside in front of 2116 Allston Way. Sergeant Ross advised me of the case, I informed Sergeant Ross that I was going to return to the Berkeley Police Department Crime Scene Unit Van to retrieve the Video Camera. The Crime Scene Unit Van was parked on Allston Way east of Shattuck Ave. After retrieving the Video camera I went upstairs to unit # 514 where I arrived at approximately 0110 hrs.

Upon arrival to unit # 514 I spoke to Sergeant Cardoza # S-31, Sergeant Cardoza advised me of the case and requested digital photos only of the interior of the above listed residence. Sergeant Cardoza directed my attention to the location of the mattress on the floor in the bathroom, various medications and a syringe. Sergeant Cardoza requested that I document the location of the mattress inside the bathroom, medications and the syringe. I returned to the Berkeley Police Department Crime Scene Unit Van which was still parked on Allston Way east of Shattuck Ave to replace the Video Camera. After replacing the Video Camera I returned to 2116 Allston Way unit # 514.

Using a Nikon D90 digital camera I photographed the interior of 2116 Allston Way unit # 514. Officer Mathis # 80 stood by with me inside unit # 514 during the time I was inside taking photographs. The photos document:

Mattress located on floor inside bathroom

Small suitcase (open) containing medication and other miscellaneous items, sitting on top of a CD player which was sitting on a chair located in the living room

Five (5) prescription medications in the name of Sterling, Edward (located inside the above mentioned small suitcase)

Two (2) suitcases (one black & one floral) located on the floor in the living room next to the above mentioned chair

Syringe located on the table next to the bed in the bedroom

Six (6) prescription medications in the name of Hayes, John located on the TV stand in the bedroom

BERKELEY POLICE DEPARTMENT USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of non-lethal or lethal force results in injury or death to a person; (2) If non-lethal weapons (OC/baton) are used on a person; or (3) If an employee discharges a firearm, on or off duty, intentionally or unintentionally.

Date: $02-13-13$				7)
To: Chief of Police via Chain of Command				
From: Sgt. B. Cardoza S-31 &				
Subject: <u>USE OF FORCE RI</u>				
Refer to Case Number(s): 13-85	10			
Date / Time of Incident: 02/12/13 / 2349 hours				
Location of Incident: 2116 Alls	ton Wy. Apartment	# <u>514</u>		
Nature of Incident: <u>Disturban</u>	<u>ce</u>			
Officer(s) / Employee(s) Involved:	Ofc. B. Smith, Ofc Ofc. B. Mathis	G. Brown, Ofc. K. Tu, C	ofc. T. Gardner, Ofc. N. I	<u>Castmiler</u>
Type of Force used:	□ Physical	Baton	□ O.C.	
	Firearm	Other:	_	
Was Officer or Police Employee injured?		⊠ Yes	□ No	
If "yes," nature of injuries: Ofc. C Gardner twisted his right knee.	G. Brown sustained p	pain to her left thumb and	left arm radiating up the	arm. Of
		n n		
	nen n	□ Von	⊠ No	
Medical treatment required:	BFD Respo	onse— Yes	Z 140	
Was a citizen(s) injured during this	s incident?	☐ Yes	⊠ No	
If "yes," nature of injuries: The s	uspect did not sustai	n any visible injuries		

RECEIVED

FEB 1 9 2013

Supervisor's Comments:

Appropriate use of force for the circumstances and the situation.

Division Commander Recommendation:		
Chief of Police (Signature) 2-21-13	Findings:	☐ Within Policy Referred for Administrative Action / Investigation



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 case no. - 2013-00008510



Hong, Peter

DATE / TIME WRITTEN 02/20/2013 15:29:15

APARTMENT NEIGHBORHOOD CANVAS

On 02-19-13 at about 2040 hrs, Officers Grant, P. Lee and I began contacting available residents at 2116 Allston Way (Gaia Building).

Unit Daniel Nullnyer did not hear or see anything prior to police arrival. Nullnyer looked out and saw 5-6 police officers going in and out of the apartment. Otherwise, Nullnyer did not see or hear anything noteworthy. Nullnyer had no previous interaction with Moore.

Unit — Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit — Justin Hagler saw police cars on Allston Street on the date/time of incident. Otherwise, Hagler did not see or hear anything noteworthy. Hagler had no previous interaction with Moore.

Unit Resident was asleep. Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit No answer.

Unit No answer.

Unit Alex Michel heard "banging" and shouting and briefly saw police presence in apartment 514 on the date/time of incident. Otherwise, Michel did not see or hear anything noteworthy.

Unit - No answer.

Unit Jonathan Disenhof didn't see or hear anything on the date/time of incident. However, Disenhof had previous contacts with Moore. Disenhof described Moore ("Big African lady) as "tweaking out all the time," "going around asking for cigarettes," and often "talking to [her]self."

Unit No answer

RRAT



POLICE REPORT 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

case no. 2013-00008510



REPORTING OFFICER Hong, Peter DATE / TIME WRITTEN

02/20/2013 15:29:15

Unit - No answer.

Unit - Resident did not see or hear anything on date/time of incident.

Unit — Resident (unidentified) heard "a lot of screaming from inside" apartment 514 on the date/time of incident. Otherwise, resident didn't see or hear anything else noteworthy. Resident had previous contacts with Moore. Moore often knocked on resident's door asking for cigarettes. On one occasion Moore tried to sell the resident something that was "leafy" in a clear plastic bag. Resident does not know what marijuana looks or smells like.

Unit Resident did not see or hear anything on the date/time of incident. Resident had no previous contact with Moore.

Unit Paul Donovan didn't see or hear anything on the date/time of incident. Donovan had previous contacts with Moore; known to Donovan as "Kayla." Donovan described Moore as being "sketchy" and always being "high" and "never all there."

Unit Resident didn't see or hear anything on the date/time of incident. Resident had no previous contact with Moore.

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BERKELEY

BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 0 OF

EFORTING OFFICER	DATE / TIME WRITTEN	
Grant, Jesse	02/19/2013 22:44:34	MINISTERNATION OF THE PROPERTY
2116 Allston, Gaia Building, canvass:		
- No answer.		
Romain Grouazel,	saw/heard noth	ning.
Dina Velazquez,	Miguel Velazquez,	saw/heard nothing.
Steve Shen,	Isaac Qial,	John Wang,
saw/heard nothing.		
Kyle Ross, to no phone, saw/	heard nothing.	7
	, Carolyn Kao, Grace Go,	
saw/heard nothing.		
Nikita Singh,	w/heard nothing.	
No answer.		
Barbara Roth,	Josh Trotter, 1	, saw/heard nothing.
No answer.		
Jason Yu,	Michael Wong,	Michael Chang,
saw/heard nothing.		0 1
- Aaron Bloomenthal,	, Nick Brokav	w, saw/heard
nothing.		
Andrew Bertoli.	7 1 1	
A	saw/heard nothin	
- Sanjay Sharma,	saw/heard nothin	g.
y 314 1 de 340,	saw/heard nothing.	
- No answer.		
No answer.	oril Bryant,, sa	w/heard nothing
	Lu Zheng,	
Therese Oppedal,	saw/heard nothing.	, Zimidii iii,
No answer.	buttiful a modified.	
- Rachel Newell,	saw/heard nothing	g.
- No answer.		
- No answer.		
- Raj Ramanan, saw/heard no	othing.	
- Carolyn Saulson,	, saw/heard noth	ing.
- Shiyan Ye, saw/heard not		
· · · · · · · · · · · · · · · · · · ·		saw/heard nothing.

About 0821 hrs the same female called back and said, "Yeah, hi, I'm calling because I need to get an ambulance, so that I can, um, go to the hospital." When asked what was wrong the female responded, "It's nothing mental, it's physical. . I'm having trouble breathing." The female said she was 41 years old and her name was "Xavier Moore." The dispatcher told Moore an ambulance was going to be sent.

About 0905 hrs, I obtained a search warrant (signed by the Honorable Judge T. Rogers, Superior Court) for the Berkeley Fire Department Patient Care Reports for emergency services provided to Xavier Moore on 01-11-13 (13-0331) and the instant incident, 02-13-13 (13-1652).

The Patient Care Report for 01-11-13 listed the nature of call to be "breathing problems." The patient complaints listed were "weakness," "nausea," and "breathing problems." The report narrative indicated Moore was possibly suffering from "flu-like symptoms" and "productive cough." Moore was taken to Alta Bates Hospital for further examination and/or treatment.

The Patient Care Report for 02-13-13 listed the nature of call to be "EMS Response." The patient complaints listed were "unconscious/fainting," "death," and "cardiovascular." The report narrative indicated Moore struggled with police and then became unconscious. The narrative indicated the medical interventions used by the paramedics.

(The Patient Care Reports are included in this report.)

About 1400 hrs, I received a flash drive from Panoramic Management that contained the video footage of the Gaia Building's lobby, elevator, and street on the night of 02-12-13 about 2356 hrs to 02-13-13 about 0130 hrs.

The following events are based on the Gaia Building's video system and the video system's date and time stamp:

Video file titled "Police1(1)(1).avi" is footage of the sidewalk in front of the Gaia building.

02/12/13 23:56:35

Officers Tu and Brown arrives

23:57:15

00:30:45

Officer Smith arrives

Video file titled "Police(2)1.avi" is continued footage of the sidewalk in front of the Gaia.

John Hayes contacts officers outside the building 00:00:05 02/13/13 Officer Smith exits building with Hayes 00:26:34 Officer Smith reenters building 00:28:38 Officer Mathis arrives 00:29:36 Officers Gardner and Kastmiler arrives 00:30:23 Sergeant Phillips arrives 00:30:30 Sergeant Cardoza arrives



BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO.

2013-00008510



-	NO.	. SECTION - TYPE ATTE			TEMPT / COMMIT COUN	COUNTS	MO FACTORS		☐ IMPERSONATE POLICE LAW		□ TILL TAP		
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C	3	DESCRIPTION		·									
L	NO.	LICENSE NUMBE	3	YEAR	MAKE		MODE	L		STYL	E		COLOR(S)
E	SUSP VEH		/										1
	1	DESCRIPTION											
	SUSP		1										/
	2	DESCRIPTION											
REPORTING OFFICER Vargas, Cuauhtemoc Date / Time written 02/13/2013 20:57:38													



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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 3 OF 6

REPORTING OFFICER
Vargas, Cuauhtemoc

DATE / TIME WRITTEN 02/13/2013 20:57:38

BERKELEY POLICE	DEPARTMENT	EVIDENCE AND P	НОТ	OGRAPHIC REPORT	
Case Number: 13-085					
Type of Call: Search					
Victim/Subject:					
Date: 02/13/2013	Officer at Sce	Scene: #S-27 #26 #29 Wo		eather:	
Location: 2116 Allsto	n #514	Time Arrived: 1258hrs		Time Completed: 1500hrs	
Camera: Sony DSC-S	2100 digital came	era		mber of Photos: 255 photos	
Video Camera: Sony	handy cam DC	R-SR82 digital video	cam	era (7 video clips)	
Latent Prints: NO		Elimination Prints:		GSR: No	
Evidence: yes	DNA/	Swab: No		Buccal: No	
Other:					

At approximately 1258hrs I met with Homicide Sergeant Hong #S-27 as well as with Homicide Detective Johnson #26 and Homicide Detective Grant#29 at the location listed above. Sergeant Hong informed me of the case and requested pre and post video/photographs of the apartment#514 prior to conducting a search warrant of the premises.

I took pre photos and video of the one bedroom apartment. Upon my completion Homicide staff conducted their search warrant on the apartment. Upon their completion Sergeant Hong informed me of some items he wanted collected as evidence.

I immediately labeled each item on scene with evidence placards #1 through #13. I took photos and video of the evidence prior to collecting the items as evidence. Once I completed collecting the evidence I did my post video and photographs of the apartment.

Detective Grant secured the apartment prior to our departure from the scene.

Evidence: the following evidence was collected using the following sterile equipment - gloves, brown paper bags and manila envelopes.

- 1) Leopard print fabric with a knot or tied in the center brand of garment "H&M. Located inside 2116 Allston #514 on the north east kitchen corner lying on the carpet floor.
- 2) Leopard print fabric sleepwear brand "Free Play" one size. Located inside 2116 Allston #514 on the kitchen chair.
- 3) small white straw located inside a cardboard box the box was located in the middle of the kitchen floor of 2116 Allston #514.
- 4) small clear baggie containing green leafy substance (suspected marijuana) located inside a cardboard box the box was located in the middle of the kitchen floor of 2116 Allston #514. Note: Detective Johnson #26 collected it as evidence, I only took photos of evidence #4.



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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO. 2013-00008510



DATE / TIME WRITTEN 02/13/2013 20:57:38

Vargas, Cuauhtemoc 5) a cardboard prescription box only and five blue instruction papers for Moore Xavier - the items were located inside a purse that was also located inside the cardboard box that was located in the kitchen floor of

6) Hypodermic needle with orange cap located on the nightstand -The night stand was located in the single bedroom room of 2116 Allston #514.

7) small brown box with a picture of an elephant located on the exterior top of box. The box contained two pennies, one yellow metal hoop earring, one silver metal hoop earring, seiu pin, two metal bobby pins and

8) White coffee cup containing unknown white residue and tissue located on the bedroom nightstand. The top of the coffee cup appeared to have been wrapped with clear plastic. The nightstand was located in the single bedroom room of 2116 Allston #514.

9) small brown box brand "US POLO ASSA" containing numerous small blue plastic items, yellow capsule style pills (G5027), metal key, one touch ultra x two containers and a two piece yellow metal chain link. 10) small white plastic container brand Johnson and Johnson containing three small empty baggies and two small metal objects and a booby pin. This item was located on the single bedroom nightstand of 2116

11) AT and T statement bill and North Shore Agency letter. The items were located in the single bedroom of

12) Black Remington travel case containing three blue plastic gloves and a black shoe string. The item was located inside the TV entertainment center located in the single bedroom room of 2116 Allston #514 13) black toiletry travel case with SF logo on the side containing a black wallet with no money just misc cards (bart ticket, muni pass and super 8 motel cards), glide personal lubricant x 2, alcohol prep pad x6, secret deodorant, small round tin cans, blue sterile water plastic capsules and a silver metal ring.

Sony handy cam DCR-SR82 digital video camera (7 video clips):

1) pre and post search video of 2216 Allston #514. The apartment consisted of a single bedroom, single bath and an open shared room for the kitchen / dining room and living room. Video also shows evidence labeled #1 through #13 prior to collecting as evidence from the scene.

Video clip #1 - 4 seconds

Video clip #2 - 12min 09secconds

Video clip #3 - 2min 48seconds

Video clip #4 - 4seconds

Video clip #5 - 2min 44 seconds

Video clip #6 - 2min 11 seconds

Video clip #7 - 4 seconds

Using a Nikon D80 digital camera the following photos were taken:

1) photos of 2116 Allston #514 - search warrant

a) pre and post photos of the apartment that consisted of a single bedroom, single bath and an open shared room for the kitchen / dining room and living room.

Note: during my pre photographs and video I noticed a single mattress and what appeared to be a vacuum on

M92000103DSDM

00001122

DLEWX AWS PROD (Q, P)

AWS: INQUIRY LIST

03/05/13 16:51

RECORD COUNT: 1

REQUEST PARMS: NAME/MOORE, KAVIER 3 M STK/SEQ OPTIONS: HELP MORE WKSHEET REQV VRFY DILIG STATUS EXTD

RESP:03801 CRT:38460 DOW:07272010

F 1 ACTIVE MISDEM BW WXX:720035

DOB:

MOORE, XAVIER CHRISTOPHER

SRHE:M B

BAI:10,000.00 VIO:PC 242

WSC: MA

1388 CALIFORNIA ST
CRT #2453494 D14 *CONTACT RESP AGCY*

MSG: REQUEST SENT TO CLETS

##END: ALL AWS RESPONSES SENT # F





2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510)981-3473 Run Number:

2013-00001652

Incident Number:

2013-00001652

Incident Date:

02/13/2013

Incident Location: Patient Name: 2116 ALLSTON WAY
Xavier Moore

Primary Impression:

Primary Method: Other Government

Response Urgency: Work Related:

Work Related:

Payor Info:

Company:

Billing Priority: <Primary>

Certificate Med Nec:

Occupational Industry:

Policy #: XDJ97604605C

Group #:

NARRATIVE

Medic 1 dispatched for a possible 5150. While enroute, Medic 1 was informed by Dispatch that BPD officers were performing CPR on the patient.

Patient was found on the floor with BPD officers performing manual CPR on patient, BPD personnel stated that they were called to the address for a disturbance. When they arrived, pt was uncooperative. Pt began struggling with BPD officers. Shortly afterwards, pt became unconscious and the BPD officers immediately began CPR.

EMS does not know if pt was a recreational drug user. IV needles were found underneath some of the furnishings that were moved on scene in order to provide medical care to pt. Pt lived in the apartment with a roommate.

All times approximate



2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510)981-3473 Run Number:

2013-00001652

Incident Number:

2013-00001652

Incident Date:

02/13/2013

Incident Location:

2116 ALLSTON WAY

Patient Name :

Xavier Moore

TRAUMA

Cause of Injury

Not Applicable

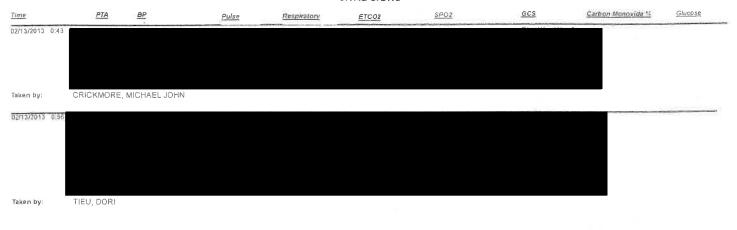
Mechanism of injury

Other

Injury Intent type

Not Applicable

VITAL SIGNS



Prior Aid

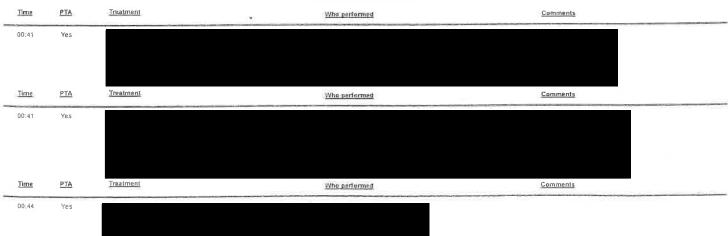
Yes

Performed by

CRICKMORE, MICHAEL JOHN

Outcome

TREATMENT SUMMARY





2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510)981-3473

Run Number:

2013-00001652

Incident Number:

2013-00001652

Incident Date:

02/13/2013

Incident Location:

2116 ALLSTON WAY

Patient Name :

Xavier Moore

Vehicle:	00	Resp Priority	ECHO	Outcome	Transport by Own Fire Agency	Disp. Notified	00:35 02-13-13
Primary Role	Ambulance	Nature Of Call	EMS Response	Dest Reason:	Closest Facility	Dispatch:	00:36 02-13-13
Crew#1 ID:	FLEMING, KYL	No of Patients:	1	Trans Priority:	Not Applicable	En route:	00:38 02 13-13
Crew #1 Role:	<primary palient<="" td=""><td>Pt Found:</td><td>On Floor</td><td>Mileage Total:</td><td>3.5</td><td>First At Scene:</td><td></td></primary>	Pt Found:	On Floor	Mileage Total:	3.5	First At Scene:	
Crew #1 Level.	Caregiver> <emt-paramedic></emt-paramedic>	EMD Performed		Level of Service :	Clinical Care Provided		
Crew #2 ID	TIEU, DORI	Possible	Yes	Cond at Dest		At scene	00:43 02-13-13
Crew #2 Role:	<primary palient<="" td=""><td>Injury:</td><td>No</td><td>Dest Type:</td><td>Hospital</td><td>At Patient:</td><td>00:4402-13-13</td></primary>	Injury:	No	Dest Type:	Hospital	At Patient:	00:4402-13-13
Crew #2 Role.	Caregiver>	Mass Casualty: Dispatch, Delay:	Not Applicable	Destination	Alta Bates Medical Center -	Transport:	01 04 02-13-13
Crew #2 Level:	<emt-paramedic></emt-paramedic>	Resp Delay:	<none></none>		Berkeley	At destination:	01:10 02-13-13
Crew #3 ID:				Barriers to Care:	2450 ASHBY AVENUE BESKELIETS CA 94705		
Crew #3 Role:		Incident Location:	2116 ALLSTON WAY	Pt Transported:	Supine - Stretcher	Trans of	01:11 02-13-13
Crew #3 Noie.		more on the second	514			Care:	02:15 02-13-13
Commentation of						In service	02.13 02-13-13

Doc'd Bv:

Crew #3 Level:

TIEU, DORI

SIGNATURES

Time

Type

02/13/2013 02:00

Facility Acceptance

Who signed

Hospital/Facility Employee - R, Collyer

Why patient did not sign

Unconscious

I am an authorized representative of the receiving facility listed in this report and hereby accept responsibility of Xavier Moore from crew members FLEMING, KYL, TIEU, DORI

* COMURRY

Start Date/Time :

02/11/2013 09:34

<u>Crew #</u> 1221 Name

FLEMING, KYL

<u>Crew #</u>

.

Name TIEU, DORI

Level:

<EMT-Paramedic>

Level:

<EMT-Paramedic>

*

* Sulcer

13-Feb-13 07:47 ED Report Bonnes, Benjamin (Physician)

Location: Alta Bates Summit Medical Center - Alta Bates Campus

PATIENT: MOORE, XAVIER

1245648 MRN:

Account: 1304400388 DOB:

Visit Start Date: 02/13/2013

Service Date:

BENJAMIN BONNES, MD Author:

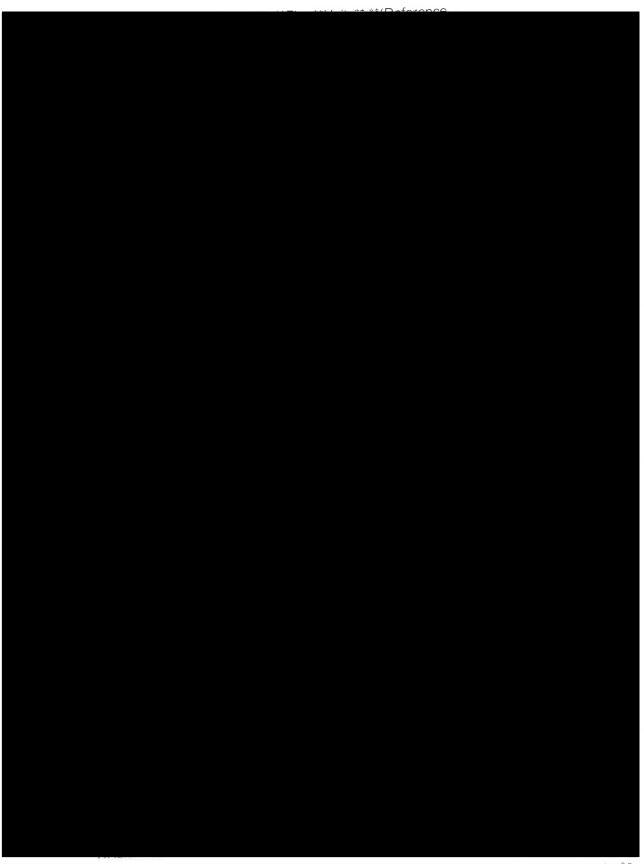
ED Provider Notes

Clinical Report - Physicians/Mid Levels Alta Bates Summit Medical Center - Alta Bates Campus Emergency Department 2450 Ashby Avenue, Berkeley, CA 94705 (510) 204-1303 02/13/2013 1:08

Patient: MOORE, XAVIER

MRN: 1245648 Visit ID: 1304400388





Account: 1304400388 DOB:

Visit Start Date: 02/13/2013

Service Date:

Author: Clinical Nursing TSystems

ED Notes

Clinical Report - Nurses Alta Bates Summit Medical Center - Alta Bates Campus Emergency Department 2450 Ashby Avenue, Berkeley, CA 94705 (510) 204-1303 02/13/2013 1:08

Patient: MOORE, XAVIER

1 alient, MOORE, 75 to 1204400388

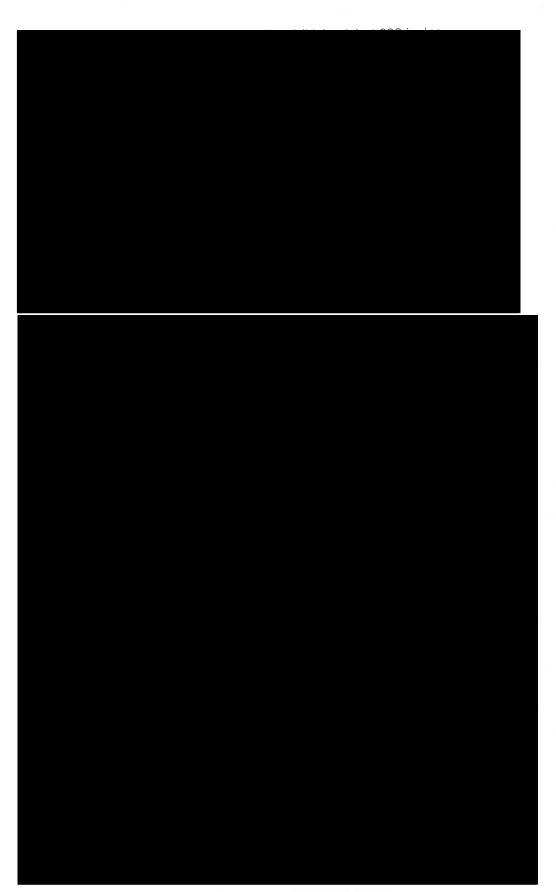
TRIAGE



Requested by: Low, Matthew R

04-Mar-13 10:24

Page 5 of 9



Requested by: Low, Matthew R

04-Mar-13 10:24

ORDER SHEET NOTES:

[Electronically signed by Campos, Mary Celine R.N. (04:44 02/13/2013)] [Electronically signed by Bonnes, Ben M.D. (07:45 02/13/2013)]

[Electronically locked/signed by Campos, Mary Celine R.N. (04:44 02/13/2013)]

DD: 02/13/2013 07:45:50; DT: 02/13/2013 07:47:57; ; D# 3074796ES; C# 13044003887

This report is not considered Final until reviewed and signed by the physician. The Final authenticated report is located in the paper medical record.

Patient Results

Multiple result categories - Performed from 01-Jan-13 to 04-Mar-13

MOCRE, ZAVIER Bonnes, Benjamin AER-ABH - Emergency VE Dept 0001245648 / 1304400388 DSC 1 or more Rinal Results -Feb-13 01:15 Glomerular Filtration Rate l or more Final Results 13-Feb-13 01:15 Comprehensive Metabolic Panel, ER Final Creatinine, Serum Final Sodium Final Potassium Final Chloride Final CO₂ Final Plood Urea Nitrogen Final ucose, Fasting Final Albumin Final **Total Protein** Final Calcium Final Bilirubin, Total Final Alkaline Phosphatase Final SGOT/AST Final 30 T/ALT Final n Gap Final nized Calcium, Calculated PLEASE NOTE: An individual test for ionized calcium with better accuracy by direct measurement is available if desired. Final **BUN/Creatinine Ratio** Final Osmolality, Calculated PLEASE NOTE: An individual test for osmolality with better accuracy by direct measurement is available if desired. 1 or more Final Results 13-Feb-13 01:15 Magnesium Final Magnesium 1 or more Final Results 13-Feb-13 01:15 Ethanol (Ethyl Alcohol) Final Ethanol (Ethyl Alcohol)



Printed from: HI14 Page: 2 of 3



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829

(510) 268-7300 / (510) 268-7333 (fax)

Investigator Narrative

Decedent:

MOORE, Xavier Christopher

Case Number: Investigator:

2013-00538 Karen Easling

First Call Information:

On Wednesday, February 13, 2013, about 0245 hours, Nurse R. MORENO of the Emergency Room (ER) at Alta Bates Medical Center-Ashby Campus called to report the death of Xavier MOORE. MOORE was transported to the hospital ER after he became unresponsive while Berkeley Police Department (BPD) officers were attempting to restrain him. Cardiopulmonary Resuscitation (CPR) was initiated by BPD. Berkeley Fire Department arrived, on scene, and continued life-saving measures while en route to the hospital. MOORE arrived unresponsive in the ER approximately 0110 hours. Hospital personnel continued life saving measures, without success, and death was pronounced by Dr. B. BONNES at 0134 hours. (KEE8410)

Medical Summary:

According to BPD, MOORE became unresponsive while officers were attempting to detain him for a psychiatric hold. While officers were struggling to restrain MOORE, he was face down, on a mattress, on the floor. Officers were able to handcuff MOORE, using two sets of handcuffs, due to his size. MOORE continued to resist after being handcuffed. An ankle strap was used to restrain MOORE's feet. Shortly after being restrained, MOORE stopped resisting and was moved onto his side by BPD. At that time, MOORE was breathing and had a pulse. About one minute later, MOORE became unresponsive. He was not breathing and officers were unable to find a pulse. Officers immediately removed the handcuffs from MOORE's wrists and moved him onto his back to begin CPR.

According to friends, at the scene, the decedent was under the influence of methamphetamines, alcohol, and marijuana. MOORE had been on a drug binge for several days and was behaving unusually.

According to MOORE's mother, Elysse PAIGE-MOORE, the decedent was a diagnosed paranoid schizophrenic. MOORE was obese, had breathing difficulties and high blood pressure. MOORE was transgender and taking estrogen. He also had a history of drug addiction.

Four vials of blood were collected from the hospital. (KEE8410)

Description of the Death/Injury Scene:

The decedent was pronounced in the ER of Alta Bates Medical Center- Ashby Campus.

About 0320 hours, Deputy M. AHLF #1708 and I (EASLING) arrived at the hospital ER and saw the decedent face up on a hospital bed with medical therapy in place. I conducted a general visual examination of MOORE and saw no signs of trauma. He was moved to a gurney and into the Coroner's van for transportation to the Coroner's Bureau.



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829 (510) 268-7300 / (510) 268-7333 (fax)

On February 14, 2013, while performing an autopsy on MOORE, Dr. T. BEAVER, Chief Forensic Pathologist, and assisting staff located a broken glass pipe, commonly used for smoking methamphetamines and other illicit drugs, in MOORE's hair. The pipe was photographed and placed into evidence. (KEE8410)

Findings:

On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. BEAVER indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly. (KEE8410)

Supervisor Review:

On 04/23/13, I (Sgt. D. HARRIS) reviewed this case. I concur with the findings and approve this case for closure. (DH1113)

Alameda County Sheriff's Office

Coroner's Burcau 480 4th Street, Oakland, CA 94607-3829

Gregory J. Ahern, Sheriff

Director of Emergency Services Coroner - Marshal

MEMORANDUM

DATE:

February 14, 2013

FROM:

Thomas R. Beaver, M.D.

TO:

Case File 2013-00538

SUBJECT: AUTOPSY PROTOCOL

Autopsy performed upon the body of Xavier Christopher Moore at the Coroner's Bureau, 480 4th Street, Oakland, California, on February 14, 2013, at 9:40 a.m.

AUTOPSY FINDINGS

- I. ACUTE COMBINED DRUG INTOXICATION (SEE COMMENT):
 - A. HISTORY OF PHYSICAL ALTERCATION
 - B. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD REPORTS D-METHAMPHETAMINE = 0.74 MG/L, D-AMPHETAMINE = 0.06 MG/L, CODEINE 0.34 MG/L, MORPHINE = NEGATIVE, ACETYLMORPHINE = NEGATIVE, ETHYL ALCOHOL = NEGATIVE.
 - C. PULMONARY EDEMA, BILATERAL, ACUTE, MARKED.
- II. CARDIOMEGALY (800 GRAMS) WITH MODERATE LEFT VENTRICULAR DILATATION AND HYPERTROPHY:
 - A. INTRAMUSCULAR LEFT ANTERIOR DESCENDING CORONARY ARTERY.
- III. MORBID OBESITY, CHRONIC.

COMMENT: THE DECEDENT IS A 41-YEAR-OLD MORBIDLY OBESE MALE WITH SEQUELAE INVOLVING SEVERE CARDIOMEGALY, WITH LEFT VENTRICULAR DILATATION AND HYPERTROPHY, WHO BECAME UNRESPONSIVE DURING A WELFARE ENCOUNTER WITH LAW ENFORCEMENT PERSONNEL. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD DEMONSTRATED METHAMPHETAMINE AND CODEINE AT TOXIC LEVELS.

THEREFORE, BASED ON THE INFORMATION AVAILABLE TO ME AT THIS TIME, IT IS MY OPINION THAT THE DEATH RESULTED FROM ACUTE COMBINED DRUG INTOXICATION WITH A CONTRIBUTION FROM MORBID OBESITY AND INTRINSIC CARDIOVASCULAR DISEASE.

MA40:9 8105.88.89A

Sheriff-Coroner Alameda County

Body of XAVIER CHRISTOPHER MOORE

1 EXTERNAL EXAMINATION

- 2 The body is that of an unembalmed, well-developed, morbidly
- 3 obese male appearing approximately the reported age of 41 years.
- 4 The length is 70 inches. The weight is 347 pounds. Rigor
- 5 mortis is present in the muscles of the jaw and extremities.
- 6 Livor is present over dorsal aspect of the body where it
- 7 blanches sluggishly to palpation.
- 8 There is prominent creasing of the earlobes bilaterally.
- 9 Cosmetic earlobe piercing is present bilaterally. The ears are
- 10 otherwise unremarkable. The head appears normocephalic. The
- 11 scalp is covered by long (up to 40 cm), dark brown hair, which
- 12 contains braided hair extensions. The eyebrows are
- 13 unremarkable. There is no crepitus to palpation over the bridge
- 14 of the nose. The irides are brown. There is prominent arcus
- 15 senilis. The palpebral and bulbar conjunctivae are congested,
- 16 consistent with the pattern of livor. There is drying artifact
- 17 on the eyes anterior. Specifically absent are petechiae. The
- 18 palpebral and bulbar conjunctivae are otherwise unremarkable.
- 19 The external nares are unremarkable. The nasal septum is intact
- 20 and in the midline. The decedent's natural teeth are in good
- 21 repair. There are no chipped teeth. There are no broken teeth.
- 22 There is no evidence of trauma to the mucosal surfaces of the

Sheriff-Coroner Alameda County

Body of XAVIER CHRISTOPHER MOORE

44	EVIDENCE OF THERAPY: Protruding from the oral cavity is an
45	endotracheal tube. Cardiac monitoring patches (six) are
46	scattered over the torso and upper extremities. Defibrillator
47	electrode pads (two) are adherent to the right anterior chest
48	and left lateral chest. There is also a defibrillator pad
49	adherent to the left lower quadrant of the abdomen. Protruding
50	from the anterior aspect of the right lower leg is an
51	intraosseous catheter. Present on the left lower leg is a gauze
52	dressing that covers an intraosseous catheter. Protruding from
53	the dorsum of the right hand is a plastic vascular catheter.
54	Present on the dorsum of the left hand is a needle puncture mark
55	surrounded by a 3 \times 3 cm area of apparent contusion. Attached
56	to the distal aspect of the left middle finger is a pulse
57	oximeter transducer. There is no other cutaneous evidence of
58	recent therapeutic intervention.
59	SCARS AND IDENTIFYING MARKS: Present on the right upper
60	quadrant of the abdomen is an indistinct irregularly shaped area
61	of hyperpigmentation containing multiple irregularly shaped,
62	variably sized scattered cutaneous defects in various stages of
63	healing. Some of these are crusted and centrally hypopigmented.
64	Similarly, present in the right inguinal area and extending onto
65	the right lateral hip are multiple scattered irregularly shaped,

- 87 yellow, clear fluid. There are no unusual odors. There are no
- 88 rib fractures.
- 69 CARDIOVASCULAR SYSTEM: The aorta is moderately dilated at
- 90 its root. The aorta is otherwise of normal course and caliber,
- 91 There are no atheromas or aneurysms present. The great vessels
- 92 have their usual anatomical relationships. The pulmonary
- 93 arteries appear patent and free of thromboemboli. The pulmonary
- 94 veins are grossly unremarkable. The vena cava is grossly
- 95 unremarkable. The heart weighs 800 grams. The epicardial
- 96 surface is smooth, glistening and red-brown with an abundant
- 97 amount of yellow subepicardial adipose tissue. The coronary
- 98 ostia are patent and give rise to a normally distributed
- 99 coronary arterial system, which is right dominant. The left
- 100 anterior descending coronary artery assumes an intramuscular
- 101 course during the distal two-thirds of its distribution. The
- 102 coronary arteries are thin, elastic, and free of
- 103 atherosclerosis. Serial sections through the myocardium are
- 104 firm and red-brown with no areas of softening or fibrosis.
- 105 There is circumferentially symmetrical left ventricular
- 106 hypertrophy with moderate dilatation. The left ventricular
- 107 myocardium measures 2.9 cm in thickness. The right ventricular
- 108 myocardium measures 0.5 cm in thickness. The cardiac valves and

Body of XAVIER CHRISTOPHER MOORE

- 131 serosal surface of the small bowel is grossly unremarkable. The
- 132 small bowel contains a moderate amount of yellow-green liquid
- 133 material. Medications are not appreciated. The mucosal surface
- 134 of the small bowel is grossly unremarkable. The serosal surface
- 135 of the colon is grossly unremarkable. The colon contains a
- 136 moderate amount of pasty green-brown fecal material. The
- 137 mucosal surface of the colon is grossly unremarkable.
- 138 HEPATOBILIARY TRACT: The liver weighs 2900 grams. The
- 139 smooth, glistening, red-brown capsular surface is intact.
- 140 Serial sections are firm and red-brown with preservation of
- 141 normal hepatic lobular architecture. Steatosis is not apparent.
- 142 Fibrosis is inconspicuous. Mass lesions are not identified.
- 143 The gallbladder is intact and contains 40 mL of viscous, dark
- 144 green liquid bile, a portion of which is retained. Stones are
- 145 not identified. The biliary tract appears free of obstruction.
- 146 HEMATOPOIETIC SYSTEM: The spleen weighs 230 grams. The
- 147 slate gray connective tissue capsule is intact and slightly
- 148 wrinkled. Serial sections are soft to gelatinous and red-brown.
- 149 There are no mass lesions. The lymph nodes and bone marrow are
- 150 grossly unremarkable.
- 151 ENDOCRINE SYSTEM: The right and left adrenal glands are of
- 152 normal size, shape and position. On cut section the cortices

- 175 of normal size, shape and position. A biopsy is obtained.
- 176 There is no evidence of trauma.
- 177 HEAD: Reflecting the scalp demonstrates no abnormal
- 178 collections of extravasated blood within the soft tissues of the
- 179 scalp or over the surface of the bony calvarium. Reflecting the
- 180 temporalis muscles bilaterally demonstrates no abnormal
- 181 collections of extravasated blood. Reflecting the bony
- 182 calvarium demonstrates no epidural, subdural or subarachnoid
- 183 collections of extravasated blood. Skull fractures are not
- 184 identified. Discolorations of the bony calvarium are not
- 185 apparent. The superior sagittal sinus and all venous dural
- 186 sinuses appear patent and free of thromboemboli. The brain in
- 187 the fresh state weighs 1550 grams. From the vertex, the
- 188 cerebral hemispheres are symmetrical, without significant
- 189 atrophy or edema. The leptomeninges over the surface of the
- 190 brain and around the base of the brain are thin, clear and
- 191 delicate. Purulent exudates are not appreciated. There is no
- 192 herniation of the hippocampal unci or cerebellar tonsils. The
- 193 circle of Willis has its usual anatomical relationships. There
- 194 are no atheromas or aneurysms present. Serial coronal sections
- 195 of the cerebral hemispheres demonstrate no gross abnormality of
- 196 the gray and white matter. Mass lesions are not identified.

Body of XAVIER CHRISTOPHER MOORE

219	demonstrate no abnormal collections of extravasated blood and
220	are otherwise unremarkable.
221	TOXICOLOGY SPECIMENS:
222	Leg vein blood is collected and submitted for toxicological
223	analysis.
224	Heart blood is collected and retained.
225	Vitreous is collected and retained.
226	Bile is collected and retained.
227	Gastric contents are collected and retained.
228	Bladder washing is collected and retained.
229	
230 231	Jan
232	Thomas R. Beaver, M.D.
233	TRB/jkm

NO 2013-8510

ement of: John Hayes
Address: Phone:
My NAME IS JOHN HAYES AND I LIVE AT
WITH MY ROOM MATE XANTER. XANTER AND I HAVE KNOWN EACH OTHER
FOR ABOUT 15 OR MORE YEARS, XAVIER HAS USED MANY DRUGS ON A REGULAR
BASIS SINCE I HAVE KNOWN HIM. HE MOSTLY USES CRACK AND METH AND
DRINKS ALCOHOL ALMOST EVERY DAY TO GET DRUK.
TODAY WHEN I GOT HOME AT AROUND 5 OR 6 PM KANTER WAS HIGH ON
SPEED AND DRINK. WHEN HE'S HIGH AND DRINK HE BECOMES MEAN AND WANT
TO FIGHT. HE ASKED ME FOR MONEY TO GET MORE SPEED AND ALCOHOL AND
I TOUD HIM TO SE GO ASK SOMEONE FLISE AND TO LEAVE ME MONE
XAVIER GOT REALLY ANGRY AND NOVEDN'T DEAVE ME ALGUE. WE BEGAN
ROUTNG AND BECAUSE I KNOW I HAVE A TEMPER I TRIED TO IGNORE
XAVIER. XAVIER THEN TOLD ME TO JUST GET OUT.
I CALLED THE POLICE AND THEY TOOK ME WISTAIRS WHERE THE DEFLOCKS
SPOKE WITH ME AND XAVIER, XAVIER WAS ACTING "ZIGGITY BOOM LIKE
A MOTHER FUCKER". THAT MEANS HE WAS ACTING LIKE HE DOES WHEN
HE IS REALLY HIGH, XAVIER TOLD ME HE WAS GOING TO FUCK ME
UP FARLIFR. I THOUGHT THAT HE WAS GOING TO ATTACK ME AND THAT'S
WHY I LEFT, XAVIER HAS HAD A HISTORY OF BEING ANGRY AND
STABBED SOMEONE IN SANFANCISCO A FEW YEARS AGO.
THIS IS A TRUE AND ACCURATE STATEMENT AS TOLD TO OFC B. SHOTH #3
THIS IS A TRUE AND POLICE STATE OF
Witnessed: #3
Date and Time: 2-13 / 0141 Signed:

Address:

Berkeley Police, Department
10/18/64 B6424358

NO. 2013-8576

tement of: STERUNG, EDWARD GEORGE III

Phono NO PHONE

TODAY, 2/12/13, AT ABOUT 10:30-11PM 1 ARRIVED AT XAUIAN'S ARADIMENT WITH XAVIAR'S BOYFMEND JOHN HAYES. WE WERE AND I WAS TRYING GOOD. XAVIAL'S DEMEANOR APPEARED AGGITHTED ASD UPSET was pacial around and in the middle of smoking weets AND DRINKING ALCOHOL XANIAR WASK'T ASTING LIKE HIMSELF AND JOHN IF KAVIAN HAD BEEN TAKING HIS PERSCRIPTION MEDICATIONS AND JOHN SAID HE HADN'T FOR A WHILE, WHEN & TALKENG TO XAVIAR HE WASN'T MAKENE SINSE AND XANIAR WREE AROUNG ABOUT METH. XANIAR TOUS ANGEL "IF you point HAVE ANY MORE DRINGS, you CAN GET OUT". THEY CONTINUED AROUND AND XQUIAR PICKED UP A CHAR AND THREW H AT ANGEL, BUT IT DIDN'T HIT HER. XAVIAR WAS WESET BECAUSE HE THORGET THAT ANGEL HAD DRIVES AND WAS HOLDING OUT ON HIM IT WAS JUST ME, JOHN AUD XAVIAR. 5 AUGEL LEFT AND THAN MINNTES CATES XANIAR TOLD JOHN "YOU CAN LEAVE TOO", SO HE DID WITHOUT A FUSS, I CONTINUED CLEANING AND MANIAR KEEPT PACEAG AROUND AND ACTIVE STRANGE, WHEN HE WAS TAKENE TO ME HE WAS OUT OF BREATH AND HAMME DIFFICULTY DREATHING TRIED TO TALK TO XAVIAR NO I ASKED HIM IF I CONLY HELP WITH SOMETHANG ON TAUK TO HIM ADOUT WHAT WAS GOING ON WITH HIM. THE POLICE SHOWED UP A FEW MINNTES LATER AND SPORE TO XAVIAR IN THE DODRWAY WHILE I WAS STILL INSIDE. AT ONE POINT XAVIAR WAS TECCHNOTHE OFFICERS TIBORCISH ABOUT THE GOVERNMENT AND NOT FEELING SAFE. I CONLIDAT INDRESTAND WHAT YAVIAR WAS TALKING ABOUT BELAUSE HE WASN'T 138C1

Witnessed: 404 OK KASTMILER #104

Date and Time: 2/13/13 0159

Signed: DALD.

Berkeley Police Department

NO. 2013-851

No.
rement of: STELLING, EDWARD GRORGE THE
Address: Phone: NO PHONE
I'VE NEVER SEEN XAVIAR ACTURE THAT OR TALK LIKE THAT
BEFORE I KNEW THEER MAS SOMETHING ETERIOUSLY WRONG WITH
HIM TODAY.
AT ONE POINT XAVIAR AND THE OFFICIOUS STRUTTED TO SCUFFUE.
I'M NOT SURE HOW IT HARPIND BELAUSE I WAS INSIDE ADD
CONDUT HEAR THE MAKE CONVERSATION BECAUSE OF THE RADIO
AND TV. THE SUFFIE STAPPED DUTSIDE THE DOORWAY AND
THEN CONTINUED INSIDE THE ADARTIMENT. XAVIAR WASN'T DEINE
COOPERATIVE MITH THE POLICE AT ALL, THE OFFICERS KEPT
COOPERATION STATE POLICE THE WOOLDN'T HE
TELLING XAVIAR TO "STOP BESISTING BUT HE WOULDN'T. HE
KEPT RESISTING AND SPRAKING JIBBERISH. OFC. BROWN FOLD ME
TO WAIT ONTS I DE, SO I LEFT THE APARTMENT QUICKLY AND
WAITED OUTSIDE. I WAS NORRIED THAT XAVIAR WAS GOING TO
FREAKOUT AND ATTACK ME TOO AS I WAS TRYING TO GET OUT.
XAVIAR WAS RUNNING AWAY FROM THE DEFICERS LIKE A RAGING BULL,
I HAD TO DUCK OUT OF KAMARIS WAY TO AVOID GENTING TRANSPIRED.
I WAITED ONTS DE THE APANTAIENT MEAN THE ELEVATOR WHILE MORE
OFFICERS SHOWED UP. I DIDN'T GO BACK INSIDE THE APPRETMENT WHILE
XNIAN WAS THERE.
I'VE KNOWN KAVIAR AND HIS BOYFREND JOHN FOR ABOUT 23 YEARS. I KNOW THAT XAVIAR
USED TO USE CRACK COCAIN'T BUT I THINK HE LECENTLY STOPPED. NOW HE USES METH, WELD
USED TO USE CRACK COCAIN'T BUN / THINK THE DECEMBER TO BE AL MOVIAR'S CARETAKES
AND ALCOHOL REGULARLY, I RECEIVELY ACCEPTED A PART TIME JOB AS XAVIAR'S CARETAKEN
AND I HAD BEEN ONCE TO THE APARTMENT FOR ABOUT 3 DAYS AS CARETAKES. TODAY WE
WREE SUPPOSED TO SIGN THE FINALIZED PAPERS AND LOOK IN TO A LARGER APPARTMENT.
THIS IS A TRUKE AND CORRECT STATEMENT AS TOUD TO OFC. KASTMICER #104
Witnessed: OFF. KASTMILER #104 Date and Time: 2/13/13 0159 Signed: D. Flan 7 98
Date and Time: 2/13/13 0159 Signed: 5 9 1 1 1 1

1		
2		
3		
4		
5		
6		
7		INTERVIEW WITH OFC. GWENDOLYN BROWN
8		Q=Sgt. Hong
9		Q1=Ofc. Jesse Grant
10		Q2=Harry Stern
11		A=Ofc. Gwendolyn Brown
12		
13		14 OCC - (C) Drown
14	Q:	It's, uh – February 14, 1817 hours. Interview with Officer (Gwen) Brown,
15		case number 13-08510. My name is Sergeant Hong, H-O-N-G.
16		
17	Q1:	Officer Jesse Grant, J-E-S-S-E G-R-A-N-T.
18		
19	Q2:	I'm Harry Stern, and that's spelled, uh, H-A-R-R-Y S-T-E-R-N.
20		CAMENDOLVNDOWN DROWN
21	A:	Officer Gwendolyn Brown, G-W-E-N-D-O-L-Y-N Brown, B-R-O-W-N.
22	_	g organization of hodge number?
23	Q:	So, Officer Brown, could you state your rank and badge number?
24		D 1' C' 1 1
25	A:	Police officer badge number 16.
26		O1 WILL A was also af your him with DDD?
27	Q:	Okay. What was the date of your hire with BPD?
28		S 272 1001
29	A:	Seven-one-1991.
30	0.	Do you have any prior law enforcement experience?
31 32	Q:	Do you have any prior law emoreement experience.
33	۸.	Yes.
33 34	A:	1 CS.
35	0:	And, uh, with who and length of experience – length of service?
36	Q:	And, an, with who and longar of experience was governor
37	A:	Um, Richmond PD, approximately two years.
38	Λ.	Om, Riomiona 12, approximation y since
39	Q:	Uh – which patrol operations team do you work?
40	Q.	On which parts operations to your and you
41	A:	Patrol.
42	1 1.	
43	Q:	Uh, which team?
44	Α.	, ··
45	A:	Team three.

91		Ask it anyways, have you consumed any alcohol in the past 24 hours?
92	Q:	Ask it anyways, nave you consumed any according the past 2 thours.
93		No
94	A:	No.
95	0	Do you have any medical conditions?
96	Q:	Do you have any medical conditions.
97	Α.	No. Just prior to Tuesday's shift, when was the last time you slept? And how
98	A:	long, and between what hours, if you can recall?
99		long, and between what hours, it you can rocal.
100	A:	Okay, it would have been at Tuesday morning, when I got off. Probably went
101 102	A.	to bed about 3:30 am, and – woke up probably about 9:00 am.
102		to occurrently and work of province
103	Q:	Okay. Did you sustain any injuries during the incident
104	Q.	Okay. Dia you sustain any my
105	A:	I believe I hyperextended my left thumb, my right forearm is still a little
107	Λ.	swollen, and my left shh I'm sorry, right shoulder – is still sore.
108		
109	Q:	Okay. Do you wear any corrective eye glasses or contact lenses?
110	ζ.	
111	A:	No.
112		
113	Q:	Now starting at the, uh, front belt buckle, going clockwise, can you describe
114		what duty gear is on your duty belt?
115		
116	A:	I have a keeper, a flashlight, uh – I believe my gun, another keeper –
117		handcuffs, another keeper, another keeper – um, my – a second flashlight –
118		the, uh, baton. I believe a keeper, then two, uh – my, um, ammo pouch.
119		
120	Q:	Okay.
121		
122	A:	And my handcuff case.
123		
124	Q:	Okay.
125		I think I got that an thora
126	A:	I think I put that on there.
127	0.	Did your duty belt or duty gear sustain any damage?
128	Q:	Did your daty best of daty goar sustain any damage.
129	۸.	No.
130 131	A:	110.
131	0.	What vehicle make and model were you driving during Tuesday's shift?
132	Q:	
133	A:	Uh, vehicle 1701, it's black and white marked unit, uh, Crown Victoria.
135	11.	31.3 (31.3 (3.4
1 1 1		

180	Q:	Okay. Could you describe that radio broadcast and what information you
181		learned from that broadcast?
182		
183	A:	I believe it – it came out as a 415. Between, uh, roommates.
184		
185	Q:	Any call details regarding this dispute or 415?
186		
187	A:	Well, I – I check my NDT, um, uh, something (unintelligible) referrin' to the
188		roommate was schizophrenic, off his meds, and had – kicked the roommate
189		out, I believe.
190		
191	Q:	Okay. And, uh, this, uh, incident occurred on your beat?
192		
193	A:	Yes.
194		
195	Q:	Okay. And you responded to this, uh, broadcast or assignment?
196		
197	A:	Yes.
198		
199	Q:	Do you recall who else was assigned this, uh, uh, broad- who else was
200		assigned this, uh, particular call along with you?
201		
202	A:	I believe Officer Smith was assigned as the cover officer.
203		
204	Q:	Okay.
205		
206	A:	And Officer Tu attached himself to the call.
207		
208	Q:	All right. So you arrived at the location?
209		
210	A:	Yes.
211		
212	Q:	When you first arrived, what were your observations? Initial observations?
213		
214	A:	Uh, the RP, who was supposed to be waiting outside, was not outside.
215		
216	Q:	Okay. Um – what did you do – what did you do?
217		
218	A:	Well, um, Officer Tu – Officer Tu pulled up right behind me. Um
219		
220	Q:	Okay.
221		T 1 1 1 41 - 11 - 11 - 11 - 11 - 11 - 11
222	A:	I punched in the, uh, number, the apartment number, but didn't get, uh, any
223		response. I – contacted, uh, control and asked that they call the RP and have
224		them let us in.

270 271	Q:	Got it. So eventually, um, uh, he led you to the apartment? Mr. Hayes?
272 273	A:	Yes.
274 275	Q:	Okay. And you went up to the apartment on the stairs or the elevator?
276 277	A:	Elevator.
278 279	Q:	Okay. And it was apartment 514, correct?
280 281	A:	Yes.
282 283 284	Q:	Okay. So, um – and the f- and you, Officer Smith, and Officer, uh, Tu, uh, Tu is T-U, uh, you guys went up together?
285 286	A:	Yes.
287 288	Q:	Okay. So when you reached the apartment, was the door open or door closed?
289 290	A:	Closed.
291 292 293	Q:	Okay. Um, could you describe the – your surroundings just outside the apartment? Briefly?
294 295 296 297 298 299 300	A:	Uh, this is a large, um, multi-apartment complex. Um, we were on the fifth floor. And it – it's sorta designed in – like a rectangle shape, and there's a banister all the way around the, um, the floor. And the apartments are – there's a – I guess average walkway around the entire, uh, square or rectangle with, um, banisters. Um, there's an open – plaza-like area at the – the bottom. That's about
301 302 303	Q:	Okay. And is the, uh, door to apartment 514 more on which, uh, side of the building? North, east, west, or south?
304 305	A:	More on the north.
306 307 308	Q:	North side. Okay. So you reached the apartment door, again, I'm sorry, was the door closed or open?
309 310	A:	Closed.
311 312 313	2. Q#	Okay. So what happened – immediately when you arrived at the door?
JIJ	,	

359 360 361 362 363 364 365 366 367 368 369 370 371 372	A:	I told him we were there because his roommate called and said he was thrown out, and I said, "You wanna tell me what's going on?" And he's standing at the door, and he started talking about things about the FBI and, uh, he didn't feel safe, and – and I was, "Well, why don't you feel safe?" "Well, you – you know how the FBI is, and they're – they're following me." And then he – he start callin' me different names, like Gail and Carol and it was one other name, I believe Wanda, and – I told him I wasn't – either of those people, and he was sayin', "Well, I see them right behind you." And then he started talkin' about dinosaurs – so – I kept tryin' to bring him back to the conversation as to why, um, we were there, and – and I said, "Why – why – why would you kick your roommate out?" "Oh, he's fin' stupid," and I think he – at one point – or he – at one point called him Crunchy. And said, "Okay, Crunchy, are you gonna act right?" And, and I said, "Who's Crunchy?" And he pointed over to Mr. Hayes. And then he started talkin' about the FBI again. And
373 374 375 376	Q:	Okay. So – uh, if I my interject, so Mr. Moore, who's at the door, is talkin' about the FBI, not feeling safe, being followed, calling you different names as though he recognizes you
377 378 379	A:	Mm-hm.
380 381 382	Q:	dinosaurs, et cetera. Was – while he was saying these things to you, and while – while you were tryin' to bring him back on track, was he at that point calm? Or was he animated, was he agitated, can you describe his demeanor?
383 384 385	A:	Very, um, theatrical? Because he had his hands in the doorway, kinda like this, and he's – he's just like – kept doing like this, and – you know
386 387 388	Q:	Sauntering? I don't know, explain this.
389 390	A:	Pretty much, you know, and
391 392	Q:	Okay. Yeah.
393 394	A:	kept throwing his braids back and
395 396 397	Q:	Okay. Theatrical. Okay, okay. And he was able to see Mr. Hayes, 'cause he called him Crunchy, um
398 399	A:	Yes.
400 401	Q:	Okay. All right. So the conversation continues in this fashion?
402 403	A:	Yes.

449		
450	A:	Yes.
451		
452	Q:	Is that your mindset? Okay. Um, so after, uh, Mr. Hayes' warrant was
453		confirmed, did – uh, did Mr. – did Officer Smith leave with Hayes?
454		
455	A:	Yes.
456		
457	Q:	Okay. And while Officer Smith left with Hayes down the elevator out the
458		building, you were still on the landing speaking with Mr. Moore along with
459		Officer (Ken) Tu. Correct?
460		
461	A:	Yes.
462	11.	
463	Q:	Okay. So now Officer Smith is now gone with Mr. Hayes, now can you - can
464	Q.	you now tell us the story about – tell us exactly what's now happening from
465		there – that point forward?
		there that point for ward.
466	۸.	Uh, I'm still tacking with Mr. Moore, and – he's – he's becoming a little more
467	A:	theatrical, and talking about the FBI, and continuing to call me other names
468		meanical, and talking about the 1 bi, and continuing to the
469		Mars has
470	Q:	Mm-hm.
471		. C. Alban magnia
472	A:	of other people.
473		N. 1
474	Q:	Mm-hm.
475		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
476	A:	And I – at that point, I – looked at Officer Tu to let him know, um – we're
477		going to take this person in. You know, and, um – so he moved over to him,
478		and I said, "Well, Mr. Moore, you have a warrant, and we need to go take care
479		of this." And he says, "No, I don't have a warrant." And, uh, I said, "Well,
480		yeah, you do, and we need to go down to the station and get it cleared up, and
481		- " "Well, I need to go inside and call the FBI to get this cleared up.
482		
483	Q:	Hmm.
484		
485	A:	I said, "Well, you can use the phone down at the station, but we need to go -
486		we need to take care of this." And he was like, "No, I'm gonna use the phone
487		here." And I said, "We really need to go, and - and let's go on down and just
488		get this cleared up." And at that point, I looked at Officer Tu, and he took,
489		um, one of Mr. Moore's hands, and I took the other, and he just – exploded.
490		Start – grabbed his hands back like this, and – I believe Officer Tu had two
491		hands on him.
492		
493	Q:	Mm-hm.
175	Κ,	

539		Okay. And Mr m- to your - to your, uh, recollection, Mr. Moore
540	Q:	understood that you were intending on arresting him, is that correct?
541 542		understood that you was misses
543	A:	Yes.
544	11.	
545	Q:	Okay. And when he wasn't complying, when you were tryin' to, uh, use
546		verbal judo and get him to comply, he wasn't complying, he wanted to step
547		inside and call the FBI and clear this up. But eventually you felt necessary
548		that you guys had to take a hold of Mr. Moore, is that correct?
549		37
550	A:	Yes.
551	0.	All right. So you - you said Officer (Ken) Tu took one arm and while you
552	Q:	took the – while you took the other. Do you recall which arm you took?
553 554		took tile willie you took tile
555	A:	I was on the side, so it would have been his right.
556	7 1.	
557	Q:	His right. Okay. And Officer Tu took his left.
558		
559	A:	Yes.
560		And then you – earlier, you motioned where when once, uh, you both of you
561	Q:	got took a hold of Mr. Moore's arms, he basically flung in a upward motion,
562		and while you were – had grasp of his arms, that pulled both you and (Ken) -
563		Officer Tu towards his direction, inward towards the apartment. Is that
564 565		correct?
566		
567	A:	Yes.
568	,	1 inside?
569	Q:	Okay. And so – he did so, and – did, um, did he try to turn and run inside?
570		Or did he drag you and Officer (Ken) Tu in as he was going backwards into
571		the apartment?
572		Initially, um, we're going backwards into the apartment, and I believe he
573	A:	started to turn sideways, and at that point we fell.
574		Started to turn sideways, and at that point in a second
575 576	Q:	Okay.
577	Q.	Okaj.
578	A:	And it was onto the mattress.
579		11 (*0
580	Q:	Okay. Could you describe this mattress to the best of your recollection?
581		the floor
582	A:	It was a twin-size, uh, mattress that was on the floor.
583		

629	A:	Right.
630		
631	Q:	Did and – did you – do you – do you remember if Officer (Ken) Tu also fell
632		along with the – with you? Before?
633		
634	A:	He was – we all went down.
635	11.	
	0.	You all went down.
636	Q:	Tou all wellt down.
637		Outs the matters
638	A:	Onto the mattress.
639		and then your
640	Q:	Okay. Got it. All right. Um – and now you are – you're – and then your
641		struggle is – you – you and Officer (Ken) Tu trying to handcuff Mr. Moore?
642		Is that correct?
643		
644	A:	Still trying to, uh, restrain him to get the cuffs on.
645		
646	Q:	Got it. And – you said at one point there was one handcuff that was
647	٧.	successfully laced on Mr. Moore's wrist.
648		
	A:	Yes.
649	A.	1 ¢5.
650	0	Do you remember which wrist that was?
651	Q:	Do you remember which witst that was:
652		II 1' '4 the wight one
653	A:	I believe it was the right one.
654		11 to the souff on him?
655	Q:	Right one. Was it you, then? That was able to to put the cuff on him?
656		
657	A:	Yes.
658		**************************************
659	Q:	Got it. And then but you said that the other hand was buried under his – his,
660	٧.	uh – his chest while Mr. Moore was on top of the, uh, mattress. Is that
661		correct?
662		
	۸.	Yes.
663	A:	1 C3.
664		And what was Officer Tu doing at this point?
665	Q:	And what was Officer 1d doing at this point:
666		The state of the s
667	A:	He's still holding at – the hand with the handcuff on it. Because he's still –
668		he's still violently resisting. He's kicking, he's balking
669		
670	Q:	Okay. Um – balking. Meaning
671	-	
672	A:	Up and back. Um - pretty much I guess you would say flinching his back up
673		and back, up and back.

719 720 721	Q:	Okay. All right. Um – and after you made the radio broadcast, you went back to the – trying to restrain Mr
722 723	A:	I – I still had a hand on him.
724 725	Q:	Okay. All right.
726 727	A:	When – even when I made the radio – call.
728 729 730	Q:	Okay. Okay. Um – would you say, uh, Mr. Moore was, uh, kicking you, uh, or Officer Tu at all at that point? Or
731 732 733	A:	He was kicking – he was not kicking me, because I was closer up, um, towards his shoulder area.
734 735	Q:	Okay.
736 737	A:	But I could see him kicking.
738 739 740	Q:	Okay. All right. Did you at any point, were you at all – putting your, uh, body weight on his l- uh, on his neck or on his chest area during this trouble?
741 742	A:	I probably was putting my weight on – on his – his shoulder blades.
743 744 745	Q:	Shoulder blades. But not directly on his chest or directly on his neck or his head. Correct?
746 747	A:	No.
748 749 750	Q:	Okay. Um, and, um – well, you're – the struggle continues, and – at – did additional officers arrive?
751 752	A:	Yes.
753 754 755	Q:	Okay. Do you remember which officer entered first to assist you and Officer Tu?
756 757	A:	I don't remember which one.
758 759 760 761 762 763	Q:	Got it. And adish- and – um – thereafter, at the time that you, Officer Tu, and the additional officers were able to successfully handcuff Mr. Moore, about how many officers were there at that time when the successful handcuffing took place?

809			What did – apartment – what were the (unintelligible) using to hold Mr.
810) (Q:	What did – apartment – what were the (unintering tota) as a second secon
811			Moore down? The
812	2		
813	} .	A:	Their hands.
814	1		Their hands. Okay. And they were holding primarily what parts of Mr.
815		Q:	Their hands. Okay. And they were holding primarry
816		-	Moore's body?
817			I believe Officer Tu was still straddled him, and I don't know which officers,
818	8	A:	I believe Officer Iu was still straudied initi, and I don't all the large
819			but someone was holding his legs.
820			1 1 twing to
82		Q:	Okay. All right, somebody was trying to
82			
82		A:	Trying to hold his legs down.
82			1.1.1
82		Q:	keep – keep his legs down.
82			
82		A:	To keep from kicking.
82			
82		Q:	Okay.
83		₹.	the state of the s
83		A:	And I was still trying to – hold him, just hold onto him, because he – he was
83		2	still bucking pretty wildly.
83			
	34	Q:	Okay. All right. Um – do you know if the legs were restrained in any
	35	Q.	manner? Do you recall?
	36		
	37	A:	Not until, um – the sergeant arrived with a wrap.
		A.	
	38	0.	Okay.
	39	Q:	•
	40	۸.	And they were able to use the strap, the ankle strap
	41	A:	
	42	0.	Okay.
	43	Q:	Okay.
	344		to restrain his, um – his ankles.
	345	A:	
	346		Okay. So you saw that his ank- Mr. Moore's ankles eventually was – you –
	347	Q:	
	348		the strap of the wrap device, un, you saw eventuary, you event
	849		was successiumy placed on the
	850		₹7
8	851	A:	Yes.
8	852		

898	Q:	was Mr. Moore yelling?
899		
900	A:	I don't recall him yelling.
901	0.	Okay. Was he – using, uh – was he tellin' you – you and other officers
902	Q:	anything? Was he verbalizing anything?
903		allything: was he verbalizing anything:
904		I don't recall – only the – thing I remember him saying was, "Okay."
905	A:	I don't recall – only the – thing I temember initi saying was, Okay.
906		Of the second of
907	Q:	Okay. All right. And when he – when he said, "Okay, okay," did he actually
908		stop?
909		
910	A:	He slowed down
911		
912	Q:	Mm-hm.
913		
914	A:	just enough for us to – when we were pulling his arm out, he said, "Okay,
915		okay." And so he kind of relaxed a little.
916		
917	Q:	Uh-huh.
918		
919	A:	And then it was on again.
920		
921	Q: =	On again. Okay. What – did you – during the period from – again, the
922	Ψ.	doorway to the time that he was handcuffed, during that struggle when you
923		(unintelligible) period, did you – did you yourself and or hear other officers
924		give verbal commands to Mr. Moore? And if so, what were those commands?
925		Bive versus communities to see the
926	A:	I know Officer Tu kept telling him, "Stop resisting, stop resisting." We both
920	A.	did.
927		diu.
	0.	Okay. Um – do you recall any other officers saying anything to the best of
929	Q:	your recollection?
930		your reconcetion:
931	A	I - I - don't recall.
932	A:	1-1-001111ecan.
933		"Ston registing " And
934	Q:	"Stop resisting," was – you heard, "Stop resisting." And
935		
936	A:	Mm-hm.
937		
938	Q:	you said it was (unintelligible).
939		
940	A:	Yes.
941		

986 987	Q:	Left side? Okay. And so there's a – time when he's takin' a rest. Okay. And what happens during this rest period? What happens next?
988		William staff and C
989 990 991	A:	I'm watching him, and – I don't see his chest moving. So I said, "I don't think he's breathing." And so we pulled him over completely on his side. And I could see his chest start – starting to move.
992		
993	Q:	Okay.
994	Q.	Only .
995	A:	And I say, "Okay, he's breathing." And I checked pulse. And he had a pulse.
	A.	And I say, Gray, 112 2 services 8
996	0.	Okay.
997	Q:	Okay.
998	4	He moved his head a little, like this, and
999	A:	He moved his head a little, like this, altern
1000	_	a 1 1 1 1 1 1 1 1 2 1 2 2 1 2 2 1 2
1001	Q:	So he shrugged his shoulders, shook his head a little bit as you
1002		
1003	A:	He – he moved his head, I remember.
1004		
1005	Q:	(unintelligible). All right.
1006		
1007	A:	And
1008		
1009	Q:	Were his eyes open? I'm sorry. Do you recall?
1010		
1011	A:	I don't recall.
1012		
1013	Q:	Okay. Was he – w- chest is going – chest is moving was indicated for – to
1014	ζ.	you as what?
1015		
1016	A:	He's breathing.
1017	71.	
1017	Q:	He's breathing. Okay. All right, so – you saw that, you move him on his side.
1019	Q.	The bottoming, compared by
	۸.	Mm-hm.
1020	A:	IVIIII-IIIII.
1021	0.	So what happens next?
1022	Q:	50 What happens next.
1023	4	At that point, I just kept watching his chest.
1024	A:	At that point, I just kept watering in senest.
1025		
1026	Q:	Okay.
1027		1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1
.028	A:	And it was probably about – probably about a minute, 'cause it was a short
1029		time there after – I notice his chest wasn't moving anymore. And I said, "I
1030		don't think he's breathing."

1076	Q:	Officer Tu? Okay. Um, and what were – what were you doing at that point?
1077		The late hand to open up his airway
1078	A:	At this point, $I - I$ held his head to open up his airway.
1079		
1080	Q:	Okay.
1081	-	1
1082	A:	And I said, "Someone run downstairs, get a mask, get a mask. "And they said,
1083		"B – BFD's here."
1084		
1085	Q:	I see.
1085	Q.	
	A:	And then, um
1087	A.	Talle traday branch
1088	0.	Mask meaning the - the breathing safety apparatus thing.
1089	Q:	Widsk modifing the
1090	A	Right.
1091	A:	
1092		Right. Okay. All right. So – um – uh – at this point in juncture, while the,
1093	Q:	uh, CPR is – is being, uh, done on Mr. Moore, uh, to the best of your
1094		recollection, do you recall who the other officers other than you and Officer
095		Tu and Officer Phillips, uh, do you know who else was in the room during
1096		Tu and Officer Phillips, till, do you know who else was as
1097		that period time still?
1098		D1 (11)
1099	A:	I think it's Sergeant Phillips.
1100		
1101	Q:	I'm sorry. Sergeant Phillips.
1102		
1103	A:	Officer Mathis
1104		
1105	Q:	Okay.
1106	Ψ.	
1107	A:	and I believe Officer Gardner.
1107	1 1.	
1109	Q:	Okay.
	Q.	C 11sty.
1110	۸.	And I don't remember who else.
1111	A:	
1112	0.	Do you – do you recall any other, uh, supervisor or sergeant rank there in the
1113	Q:	room?
1114		
1115	A	Uh, at one point, I know of, uh, Sergeant (Cardoza) was there, but I don't
1116		know if he was there doing the – CPR or not.
1117		KHOW II HE was there doing the College of the Colle
1118		

1164		Okay. All right. Um – and then, uh, while all of the other officers gettin'
1165	Q:	Okay. All right. Om – and then, thi, white all of the other officers getting tasked with assignments, uh, um, what were you doing before you actually
1166		had left the property and went back to the station? What was your role at that
1167		
1168		point?
1169		The Division and Sorgeont (Cardoza) hecause 11h
1170	A:	I was talking with Sergeant, uh, Phillips and Sergeant (Cardoza), because, uh
1171		- she stated someone needed to – follow the ambulance. Uh, to the hospital.
1172		
1173	Q:	Mm-hm.
1174		and sho's she's really concerned
1175	A:	And, um – Officer Tu volunteered to go, and she's she's really concerned
1176		about his, um, well-being, because – he was s- um – sweating, seemed to be
1177		out of breath, 'cause he had been doing the chest compressions
1178		
1179	Q:	Mm-hm.
1180		1 1241 124 Language that he had back
1181	A:	and I notice he – he kinda limped a little bit, knowing that he had back
1182		surgery
1183		
1184	Q:	Yeah.
1185		Less Plans 211 And at that point
1186	A:	and I ask him, I said, "(Ken), are you sure you're okay?" And at that point,
1187		she said, "We should get another officer, um, to f- to go," and I – and I believe
1188		Sergeant (Cardoza) said, "Either one of you guys go." You know, and I said,
1189		"I'm staying here till this scene is secured." And so (Ken) said, "I'll go." And
1190		- um - Sergeant (Cardoza) was like, "You need to go to the station. You need
1191		to get – you start writing. You need to go to the station and start writing." I
1192		said, "I'm not leaving till the scene is secure." He said, "I have - " Officer
1193		such and such, I don't remember who it was." He said, "He'll secure the
1194		scene." At that time, the I.D. tech came. And I left.
1195		
1196	Q:	Mm-hm. So you left and went back to the station to prepare
1197		
1198	A:	Yes.
1199		TANK THE PROPERTY OF THE PROPE
1200	Q:	police report? Okay. Okay. Who was the scene supervisor to your - to
1201		your knowledge, who was the supervising officer on that incident?
1202		to the local section of the course
1203	A:	Being that it was my - beat, I considered Sergeant, uh, (Cardoza), because
1204		he's my sergeant
1205		
1206	Q:	I see, okay.
1207	-	

1253		
1254	A:	No.
1255		1 1 1 Moore?
1256	Q:	Did you at – did you discharge your firearm at Mr. Moore?
1257	2	
1258	A:	No.
1259		
1260	Q:	Did you – did any other officers?
1261		
1262	A:	No.
1263		1 CC finony
1264	Q:	Did any other officers – you, yourself, or any other officers use your firearm
1265		as a blunt object?
1266		
1267	A:	No.
1268		
1269	Q:	Okay. What about kicks? Did you kick Mr. Moore in any fashion?
1270	Ψ.	
1271	A:	No.
1272	1.1	
1273	Q:	What about any other officers?
1274	٧٠	
1275	A:	No.
1276	1	
1277	Q:	Okay. Um – let's see. I'll take a pause, and
1277	Q.	
1278	Q2:	(Gwen), uh – I know you mentioned that Hayes had said something
1279	Q2.	downstairs about, uh. Mr. Moore using drugs, drinking all day. When - in
1280		your contact with him, did you see any signs or symptoms of, you know,
		influence of drugs or alcohol that you could tell?
1282		minuonee of drugs of the service of
1283	۸.	Mr. Moore appeared to be – it was hard for him to focus. Because when I –
1284	A:	kent trying to bring him back to answer my questions in regards to what was
1285		going on with he and his roommate, he kept talkin' about the FBI, and – calling
1286		me these other names – and dinosaurs, so – it was – at the point where – I felt
1287		like, "Oh, he – he may be 5150 here." He's – he's definitely not makin' any
1288		sense. And then again, his roommate, I – I had the knowledge that he had
1289		been doing drugs quite a bit that day, so I was under the impression that he's
1290		probably pretty high and – 5150 all in one.
1291		probably premy men and 3130 and mone.
1292	00	Okay. Any – any physiological signs that you recall? Uh
1293	Q2:	Okay. Ally – ally physiological signs that you recall.
1294		NT.
1295	A:	No.
1296		

1	342		20 1 11 1 4 4 200
1	343	Q2:	Or off to the sides in there?
1	344		- in that corner
1	345	A:	It was – it was in – in that corner.
1	346		Okay. Okay. And, uh - when - when you - the - I believe you said he fell on
1	347	Q2:	Okay. Okay. And, un – when – when you and a start of the correct?
1	348		his stomach? Is how he fell, is that correct?
	349		He fell on his stomach and side, 'cause he had his arm buried up under his
	350	A:	He fell on his stomach and side, cause he had his difficulty
	1351		torso.
	1352		c.u. did you fall on top of him, on the mattress,
	1353	Q2:	Okay. And – first, when you fell, did you fall on top of him, on the mattress,
	1354		some – like how did you fall? In relation to him?
	1355		Local bata like this and I went over him,
	1356	A:	I fell – kinda like over his shoulder. 'Cause he's like this, and I went over him,
	1357		I fell – kinda like over his shoulder. Cause he state when he pulled, I went because I still – was trying to hold onto this hand, and when he pulled, I went
	1358		– like this.
	1359		
	1360	Q2:	Okay.
	1361	V 2.	
	1362	A:	And I lost the grip. On his hand.
	1363	21.	
	1364	Q2:	Okay. Is that sort of across his body? Is that how you're describing it?
	1365	Q2.	
	1366	A:	Yes.
	1367	Λ.	
	1368	Q2:	Okay. And, uh, how about (Ken)? Where did he end up?
	1369	QZ.	
	1370	A:	(Ken) end up straddling him.
		A.	
	1371	02.	Okay. Like
	1372	Q2:	
	1373	۸.	Like across the – the, um, torso area.
	1374	A:	
	1375	02.	And is that like on his knees? Straddling him?
	1376	Q2:	Tille to way and
	1377	۸.	Yes.
	1378		
	1379		Like – knee – knees are – were his knees on him, or like
	1380		Like kiles 1820-1
	1381		No.
	1382		110.
	1383		Oh
	1384		OII
	1385		He was – they were
	1386	6 A:	He was they movem

1432	A:	I had not had any personal contact with him, but I knew of him.
1433		01.1
1434	Q:	Okay – what is it – what did you know of him – generally?
1435		The state of the s
1436	A:	Um, his mother called the station, I believe, it may have been a month or so
1437		ago, asking for a welfare check, and said that her son was – depressed, um –
1438		she mentioned that he had a lot of issues going on, and could we check on his
1439		welfare? I called her back to let her know, um, Officer (Galvin) and I had
1440		gone out, and there was no one at the apartment. So I called her back to let
1441		her know. That was our – our finding.
1442		de la companyación de la company
1443	Q:	Do you recall what – the specific issues the mom was talking about?
1444		1' 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1445	A:	She said her son had called her – earlier that day, said he was very depressed,
1446		um, she said he was going through a sex change, um, he was, um, a heavy
1447		drug user. He drank heavily. And she was concerned about, uh, the
1448		roommate. She said he hung out with a guy that he shared an apartment with
1449		in San Francisco, and they eventually got kicked out of that apartment because
1450		of fighting and, um – the arguments and – you know, she said something to
1451		the effect that San Francisco PD was really sick of them, and she's glad that
1452		she was able to get him an apartment over in Berkeley, because she's heard
1453		that the Berkeley police are much more lenient and tolerable.
1454		of the second of
1455	Q:	Mmm. Okay. Is, uh – you report – uh, you mentioned Mr. (Edward) Sterling. And, uh – was Mr. Sterling the gentleman that was in the room that you told
1456		And, un – was Mr. Sterling the gentiental that was in the room that you to leave at – that day when you first arrived there? Remember, you said you
1457		were fighting – you and – you and Officer Tu were struggling with Mr.
1458		Moore, and there happened to be a – someone in the room.
1459		Moore, and there happened to be a – someone in the room.
1460		Voc
1461	A:	Yes.
1462		Would that be Mr. Sterling?
1463	Q:	Would that be wit. Sterning:
1464		Voc
1465	A:	Yes.
1466	0.	Okay. Um - had you at - that time, on scene, any chance to speak with Mr.
1467	Q:	Sterling? Did you have an opportunity to speak with him?
1468		Sterring: Did you have an opportunity to approximately the second of the second opportunity to approximately the second opport
1469	Α.	After the incident? Or
1470	A:	After the moldent: O
1471	0.	Correct.
1472	Q:	Colloct
1473	۸.	No.
1474	A:	110.
1475		

INTERVIEW WITH OFC. GWENDOLYN BROWN
Interviewer: Sgt. Hong
02-14/6:17 pm
Case # 2013-08510
Page 35

1521	This transcript has been reviewed with the audio recording submitted and it is an accurate
1522	transcription.
1523	Signed

1		
2		
3		
4		
5		
6		
7		INTERVIEW WITH OFC. KENNETH TU
8		Q=Sgt. Hong
9		Q1=Dr. Johnson
10		Q2=(Sara) Burdick
11		Q3=(Harry) Stern
12		Q4=(Jonathan) Murphy
13		A=Ofc. Kenneth Tu
14		
15		
16	Q:	It is, uh, February 13, Wednesday, approximately 1528 hours, which is 3:28
17	Q.	pm. This is Sergeant Hong, H-O-N-G, and in the room is, uh, um, Officer Tu,
		along with others, they can introduce themselves.
18		along with others, they earl man a
19	01.	Doctor Johnson, badge 26. J-O-H-N-S-O-N.
20	Q1:	Doctor Johnson, baage 20. 5 6 22 24 2
21	00-	(Sara) Burdick with (Rains), (Luchia), (Stern), B-U-R-D-I-C-K.
22	Q2:	(Sala) Burdick With (Rums), (Busina),
23	024	I'm (Harry) Stern, that's S-T-E-R-N.
24	Q3:	Till (Harry) Broth, that o b 1 2 2 2 2
25	Α .	Officer (Ken) Tu, uh, badge 28, last name's T-U.
26	A:	Officer (Ren) 14, an, eauge 25, and
27	04	(Jonathan) Murphy, M-U-R-P-H-Y, with (unintelligible).
28	Q4:	(Jonaman) Walphy, 11 0 121 12 19
29	0.	Okay. Okay, (Ken), um, just wanna confirm with you and your representative
30	Q:	that you signed the admonition.
31		that you signed the admonition.
32	Α.	Yes, I have.
33	A:	105, 1 have.
34	0.	Correct? Waiver? All right. So - all right. So, (Ken), could you state your
35	Q:	rank and your badge number?
36		rank and your badge number:
37	A	Police officer, badge number 38.
38	A:	Police officer, badge number 30.
39	_	What's your, uh, hire date? With, uh, Berkeley Police Department?
40	Q:	what's your, un, mie date: with, un, betterey i once Beparenter
41		III. A
42	A:	Uh, April 2007.
43	0	Do you have any prior law enforcement experience?
44	Q:	Do you have any prior law enforcement experience:
45		

01			
91 92	A:		8:30 pm to 6:30 am.
93	A.		0.50 pm to 0.50 am.
93 94	Q:		Okay. Do you hold any secondary employment?
95	Q.		Okay. Do you note any secondary and property
96	A:		No.
90 97	Λ.		110.
98	Q:		Did your work any overtime after the last shift and prior to this shift?
99	Q.		Did your work any oversum small man in
100	A:		No.
101	л.		
102	Q:		Have you taken any medication, prescription or otherwise?
102	Q.		That by the temperature of the second of the
103	A:		No.
105	Λ.		
106	Q:		Have you consumed any alcohol in the past 24 hours?
107	Q.		1
108	A:		No.
109	71.		
110	Q:		Do you have any medical conditions?
.11	ζ.		
112	A:		No. I'm sorry, can I clarify one thing? Yesterday's shift was a - it's now
113	1 1.		Wednesday, right?
114			7, 0
115	Q:		Yes. (Unintelligible).
116	ζ.		
117	A:		I'm sorry. The shift I worked before was the - the day before, the Monday
118		^	before.
119			
120	Q:		Right. Okay. The Monday before.
121			
122	A:		The same hours.
123			
124	Q:		Okay. Um - when was the last time you slept? And how long and between
125			what hours did you sleep?
126			
127	A:		Uh, prior to this interview? Or prior to my shift last night?
128			
129	Q:		Uh, how about both?
130			
131	A:		Uh, prior to this interview, I slept approximately one hour. Uh, since my last
132			shift, and prior to my previous shift, I slept approximately seven hours.
133			
134	Q:		From yesterday's incident, did you sustain any injuries?
135			

181 Q: 182 183 Uh - why don't we, uh - at this point, I'm gonna ask you about what you observed in terms of the incident scene. But before that, 'cause it may be, uh, already in your sub- in your report. Now do you have a report that you've completed regarding, uh, yesterday's incident?

184 185 186

189

Yes.

187 188 Q:

A:

All right. Okay. Uh - so - I'm just gonna read it out loud for the tape so we'll know exactly, uh, which report you're submitting. So - this, uh, report is a supplemental report by Officer Kenneth, K-E-N-N-E-T-H, last name Tu, T-U, that's Tom Union. And the report reads, "On 2-12-13 at approximately 2357 hours, I responded to assist with a report of a disturbance between roommates at 2116 Allston Way, A-L-L-S-T-O-N, Allston Way, the Gaia apartment building. Gaia, G-A-I-A. I arrived on scene with Berkeley police officers (Brown), badge 16, and Smith, badge three. We contacted the reported party, Hayes, H-A-Y-E-S, in front of the building. Hayes reported that his roommate, Moore, M-O-O-R-E, was - was schizophrenic and off his medication and had kicked him out of the apartment. Hayes stated that Moore needed to be placed on a 5150 hold. Hayes took us up to his residence, apartment number 514, Hayes opened the front door with this key, and Officer (Brown) called into the apartment from the doorstep. Moore same to the front door, and Officer (Brown) initiated conversation with him. I stood by as a cover officer to keep Hayes separated from Moore. During this contact, Moore came increasingly agitated and made numerous paranoid, rambling statements. Moore repeatedly stated that he was being followed by the FBI and that he did not believe that we were real police officers. During the investigation, Officer (Brown) placed Hayes under arrest for an active warrant and directed Officer Smith to transport him from the scene. Officer Smith placed Hayes in handcuffs and then escorted him downstairs to his patrol vehicle. I remained on scene with Officer (Brown). Officer (Brown) asked Moore to come outside to speak to him. Moore agreed and stepped outside of the apartment into the exterior walkway. Officer (Brown) then informed Moore that he was being detained for a warrant. Moore became extremely upset and was unresponsive to our verbal commands. Officer (Brown) then signaled me to attempt to detain Moore in handcuffs, so I grabbed him by the left wrist with both my hands. Moore immediately began screaming and violently pulling away and then back - and then ran back into the apartment, pulling Officer (Brown) and I in with him as we tried to detain him. A person later identified as Sterling, S-T-E-R-L-I-N-G, was inside the apartment living room at the time and for the safety of all parties present, Officer (Brown) directed him, Sterling, to leave the apartment. Sterling complied and went outside. Moore was able to pull himself out of my grasp and fell on his left side into the mattress in the living room. He th- he then began kicking me as I attempted to place his right arm in a control hold. I sprawled into - sprawled onto his hip in an attempt to prevent him from further kicking me and again -

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224

225

271		The hallway's approximately, I would estimate, maybe ten feet long, um, that
272 273	A:	into the living room where the mattress 1s. Um, I went in - into the
274		hallway, and, um, as far as - as the bed, so the middle of the living room is
275		where I was.
276		
277	Q:	About as far as you went in?
278		
279	A:	Yes.
280	3.6	Is the mattress against the right wall the bed you're talking about that he fell
281	Man:	onto?
282		Onto:
283	Α.	Yes.
284	A:	103.
285 286	Q:	That's the bed that he fell onto?
287	Q.	
288	A:	Yes. I - I think there's a frame or anything. I think it's just a mattress on the
289	1 2.	floor.
290		11
291	Q:	Okay. Um - where was - Sterling, to your recollection?
292		the state of when we were - when we went in.
293	A:	Uh, Sterling was sitting on that mattress when we were - when we went in.
294		Okay. So - when you got there, was the door open already? Or did you guys
295	Q:	Okay. So - when you got there, was the door open arready.
296		have to knock?
297		When we got there, it was closed. Um - the reporting party, Hayes, unlocked
298	A:	the door and opened the front door.
299		the door and opened the reasons
300 301	0:	So Hayes unlocked the door and opened it for you?
302	Q:	
303	A:	Yes. He had his own key to the door, unlocked it.
304	2 2.	
305	Q:	And when the door opened, what did you see?
306		
307	A:	Um - nothing at first, he opened the door, and then, uh, Officer (Brown) called
308		out to Mr. Moore, the other involved party.
309		777 41 1 111' 42 De vou recell?
310	Q:	What'd she call him? Do you recall?
311		I believe she called him by his first name, (Xavier).
312	A:	1 believe she caned that by his more hame, (
313	0:	(Xavier)?
314	Q:	(Maylor):
315		

			He's, uh, providing the identifying information of both parties to our records
360	A:	l-	oureau, uh, to provide - to do, uh - corpus and NCIC checks.
361		C	sureau, un, to provide - to do, un - corpus und 1,010 officer.
362	0.	Ç	So he's doin' - NCIC meanin' he's doin' warrant checks
363 364	Q:		of the student in the state of
365	A:	- Y	Warrant checks, probation status
366	Λ.		The state of the s
367	Q:		based on first name, last name, birth dates, et cetera
368	ζ.		
369	A:	•	Yes. Yes.
370			
371	Q:	•	as standard radio procedure.
372			
373	A:	,	Yes. Got it. Okay. And then what did he find out?
374			I i discontact I mass up it was determined that
375	A:		Um - at one point during this contact, I guess, uh, it was determined that
376]	Hayes had a active warrant. Um - Officer (Gwen), uh, tasked, uh, Officer Smith with confirming that warrant and then transporting her from the scene.
377			So Officer Smith took custody of Hayes, uh, and escorted him away from the
378		i	So Officer Smith took custody of frayes, this and escorted first array from
379			apartment and downstairs to his patrol vehicle.
380			Got it. And at this point, you and Officer (Brown) are still outside.
381	Q:	'	Got it. And at this point, you and officer (Brown) and some control
382	۸.		Yes.
383	A:		1 CS.
384	0.		Got it. And - while you and Officer (Brown) are outside, from what I
385 386	Q:		understand, Officer Smith left with Hayes
387			understand, officer states and
388	A:		Yes.
389	Λ .	54	
390	Q:		to take him to jail for his active warrant.
391	ζ.		
392	A:		Yes.
393	11.		
394	Q:		Okay. Do you know - do you remember - do you know what the warrant was
395	Ψ.		for?
396			
397	A:		I was, um - I was on channel one, monitoring regular radio traffic, so I don't
398			know what the warrant was for.
399			
400	Q:		Okay. So - Mr. Hayes and Officer Smith is now gone.
401	~		
402	A:		Yes.
403			

449	Q:	Okay.
450		whether it he he
451	A:	He was - throughout the contact, he was referencing the FBI, whether it be he
452		needs to call them or - being followed by the FBI.
453		I was he fis-
454	Q:	Okay. When you say that Mr. Moore was upset, was he - I mean, was he - fis-
455		was he showing the behavior of an upset person? Was he screaming, was he
456		
457	A:	Yes.
458		
459	Q:	flaring his arms, (unintelligible)?
460		Y 11 to 4 the delegation
461	A:	He - he started to elevate his voice towards us. I wouldn't say at the time he's
462		screaming, but he's - definitely starting to get - more and more upset. Voice is
463		getting higher
464		
465	Q:	Okay.
466		
467	A:	getting louder, uh, waving his arms around in a
468		
469	Q:	Okay. So, uh, at - one - and at one point, Officer (Brown) asked you to do
470		what, take a hold of him?
471		
472	A:	Yes.
473		8
474	Q:	Or - can you describe that?
475		
476	A:	It - it was all nonverbal between Officer (Brown) and I, she - when it became
477	7.51	clear that Mr. Moore was not goin' to - calm down and comply with her verbal
478		commands, she - looked at me, nodded towards - towards Mr. Moore, just -
479		looked at me like this and - indicated like that.
480		
481	Q:	Okay.
482	ζ.	·
483	A:	That the - directed the head - 'cause the head shake towards Mr. Moore.
484	21.	
485	Q:	Okay so you were - you basically showed that she basically - got your
486	Q.	attention, she uh - sh- nod her head, and swaying it, in a fashion, telling you,
487		"Uh, we have to," in your interpretation was, "we have to handcuff this
488		person."
489		person
489	A:	Yes.
490	PX.	
	0.	Okay. And you knew what exactly what she was referrin' to, and so you
492	Q:	moved in?
493		moyou m.

539 540 541 542		coming towards the bed in the living room. At that time, I see Mr. Sterling sitting on the bed. Mr. Sterling immediately jumps up, runs to the other side of the room, uh, we come crashin' through, Mr. Moore breaks free of my grip, falls onto the bed, um, and just starts kicking at me.
543 544	Q:	Kicking.
545 546	A:	Yes, with his feet.
547 548 549	Q:	Can I interrupt? So, uh - to your recollection, uh, what is Mr. Uh, Moore's, uh, gender?
550 551	A:	Uh - Mr. Moore is a - is a male.
552 553	Q:	Mm-hm.
554 555	A:	But - I believe he's a - transgender male? Or
556 557	Q:	Okay. Um - how tall was he?
558 559	A:	Maybe five nine, five ten?
560 561	Q:	Okay. How much you think he weighs?
562 563	- A:	Uh, approximately 350 pounds.
564 565	Q:	Okay. So he's a large man.
566 567	A:	Yes.
568 569 570	Q:	Okay what made you, uh, believe that he was transgender? What physical appearances?
571 572 573	A:	Uh, extremely high-pitched voice, um - and - just - I guess the - the - the facial features are starting - or - look - somewhat feminine, too, and the clothing he
574 575		was wearing was a - was a skirt with a - like a wrap-around skirt and - and kind of a tube-top upper top clothing.
576 577	Q:	Did he have any type of women, uh, uh, women's make-up on?
578 579	A:	No, he had long hair, and
580 581	Q:	Long hair? How long?
582 583	A:	I - I believe a little past the shoulders. Uh, not too clear on that.

		1 1'6 westween that we described?
Q:		Uh, so he's now laid down on this, uh, makeshift mattress that we described?
A:		Yes.
Q:		Is he on his stomach or on his back?
A:		He's facing the wall, so he's on his left side.
Q:		Okay.
A:		At - at the - initially, when he first fell down.
Q:		And you said he was kicking at you.
A:		Yes.
Q:		Um - all right, so go ahead and continue.
A:		So - at that point, now that he's down, um, to prevent him from kicking me, uh, I sprawl on top of his hips. So - by sprawl, I - I put the - my entire upper torso on his hips, and that allows me to kinda control his legs and his hip to keep him from, you know, thrashing too much and kicking me in the chest and legs anymore. Um, once I'm in that position, I kinda have a good reach to his right arm, 'cause it's right in front of me, so I'm able to grab his right arm, force it behind him, and I - I'm able to - to get into a rear wrist lock. So now I've got control of his right arm. Um - at some point, he - he r- he rolled onto his stomach, and his left arm is underneath him, um, and he's not - he's not givin' it up. So Officer (Brown) can't access that arm. Both my arms are tied up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist.
Q:		Okay. Do you recall, um - so you and Officer (Brown) are the ones inside?
A:		Yes.
Q:		Is - and Sterling's still inside as well?
A:		Uh, actually, almost immediately, once he popped up, um, Officer (Brown) directed Sterling to - to go outside.
Q:		He complied?
		Yeah, he complied.
	A: Q: A: Q: A: Q: A: Q: A: Q: A: Q: A:	A: Q: A:

719			
720	F	A :	Yes,
721 722	, (Q:	And with the, uh, ankle strap parse- portion of the wrap device, correct?
723 724	- 1	A:	Yes.
725 726	5 (Q:	Were you guys able to, uh, secure and r- restrain his legs?
727 728	} .	A:	I believe it - it was actually deployed to him.
729 730)	Q:	Other than being deployed, it was - he - he
731 732	2	A:	I mean, it was - used on him.
733 734 735 730	4 5	Q:	wrapped it - used on him. Okay. And so now I - is he still kicking - even though he's handcuffed, even though his, uh, legs are now - ankles are - are tied together with the strap, is he still physically resisting?
73′ 73′ 73′ 74′ 74′ 74′ 74′	8 9 0 1 -2	A:	Yeah, once - once he was secured, he - he still struggled. He was screaming and kicking briefly, um, and before - at least to me, it appeared he - he decided to - or he calmed down a little he stopped struggling so much. He stopped struggling. Uh
74 74	14	Q:	Okay.
74 74 74	16	A:	timewise - I really can't say how long it continued after - uh, it wasn't very long, but - he did continue after being secured.
75 75		Q:	To the best of your recollection, from the time that when you and Officer (Brown) went hands-on meaning you - you took physical hold of Mr. Moore to the time that he was now restrained in handcuffs, with - his ankles restrained, and he has now calmed down. Can you estimate how many minutes it was during that duration?
7:	54 55	A:	Oh, gosh. Maybe - I'd say anywhere between three to five minutes.
7:	56 57	Q:	Okay. So he's calmed down. Correct?
7	58 59	A:	Yes.
7	60 61 62	Q:	What did you guys do in terms of his positioning as he's calmed?
/	UΖ		

808		
809	A:	No.
810		5:1
811	Q:	Did you use the firearm in any way to, uh, his Mr. Moore?
812		N
813	A:	No.
814		Did you see if Officer (Brandon) Smith used any type of strikes or kicks?
815	Q:	Did you see it Officer (Brandon) Simin used any type of surries of
816		A a for as I say no
817	A:	As far as I saw, no.
818		Did you see Officer, uh, Smith use LC?
819	Q:	Did you see Officer, un, Simin use Ec.
820		NT-
821	A:	No.
822		Did you goo him use a baton?
823	Q:	Did you see him use a baton?
824		NT.
825	A:	No.
826		Did you see if Officer Smith ever used any type of blunt object?
827	Q:	Did you see if Officer Similifever used any type of stant especies
828		NI
829	A:	No.
830		Uh, from Officer Mathis. Did you see if he used any strikes or kicks?
831	Q:	On, from Officer Madins. Did you see if he about any surface of surface
832		Ma
833	A:	No.
834		A OCo2
835	Q:	Any OCs?
836		
837	A:	No.
838		A laston was?
839	Q:	Any baton use?
840		N.
841	A:	No.
842		A - Albert Albert abjects?
843	Q:	Any other blunt objects?
844		NT.
845	A:	No.
846		And I'll go back, and you did not see Officer Smith nor Mathis use their
847	Q:	
848		firearm in any way?
849		Comment
850	A:	Correct.
851		The industry mistal?
852	Q:	Their duty pistol?

898	Q:	And lastly, for Officer, uh, (Brown), did you use - see her deploy any strikes
899		or kicks?
900	۸.	No.
901 902	A:	110.
903	Q:	Any OC?
904		
905	A:	No.
906	0	Datam ⁹
907	Q:	Baton?
908 909	A:	No.
910	Λ.	
911	Q:	Any other blunt objects?
912		
913	A:	No.
914	0	And, uh, her firearm?
915	Q:	And, un, nor meann.
916 917	A:	No.
)18	11.	
919	Q:	Okay. Was the struggle primarily - one last - on the bed itself, not on the
920		ground?
921		To a set antimate on the hed
922	A:	It was almost entirety on the bed.
923	0.	On the bed. And at one point - at - at what point was he l- where was he laid
924 925	Q:	on his side? On the bed or on the ground?
926		
927	A:	On his side, he was, uh, still on the - on the mattress.
928		1 this on the mattress the entire time
929	Q:	Okay. Oh, so you kept him on the mattress the entire time.
930	Α.	Yes. Yes.
931 932	A:	
932	Q:	Now, uh, we left off where, um - which officer checked to see he was still
934	ζ.	breathing and he had a pulse and he was fine?
935		
936	A:	Uh, Officer (Brown).
937		Officer (Brown)? Okay. As - time progressed, what occurred?
938	Q:	
939	۸.	So - I'd say maybe - maybe about a minute after - after we rolled him onto his
940 941	A:	side um - Officer (Brown) reporting that she didn't think he was breathing
941		any more, and she could no longer feel a pulse at the carotid.
) 12		TATAL BASE

988 989	Q:	Okay. So, uh, Officer (Brown) is doing the, uh, airway, and you are doing the compressions.
990		
991	A:	Yes.
992 993 994	Q:	Do you recall who requested, um - it - was there at any point before this or up until now that the paramedics were summoned?
995		I don't know.
996	A:	
997 998 999	Q:	You don't know? Okay. Do you know - or do you recall hearing who - do you recall anybody requesting paramedics at this point?
1000		to the was but I remember hearing the request over
1001 1002	A:	Uh, yeah, I don't remember who was, but I remember hearing the request over the radio for - for fire department.
1003		
1004	Q:	Okay. And (unintelligible) do you recall the, uh, why the request was made
1005		over the - do you remember the words used by the
1006		
1007	A:	I don't.
.008		Got it. But you, uh - but you - you recognized it was radio traffic regarding
1009	Q:	Got it. But you, uh - but you - you recognized it was radio
1010		the request for, uh
1011		
1012	A:	Yes.
1013		Date The Department paramedics
1014	Q:	, uh, Berkeley Fire Department paramedics.
1015		
1016	A:	Yes.
1017		Okay. About how long do you estimate you were doing chest compressions
1018	Q:	before the paramedics arrived?
1019		
1020		A few minutes, um - I - best guess, again, another maybe - another maybe
1021	A:	three to five minutes
1022		unee to five himatesia.
1023		Okay.
1024		Okuy.
1025		of compressions.
1026		
1027		Now the fire, ambulance - paramedics arrived
1028 1029		
1029		Yes.
1030		
1031		and did they take over?
1052	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	

		Tourse at a second
1168	Q:	Okay. Um, do you recognize based on your training experience when a
1169	Q.	person is under the influence of some type of narcotic substance?
1170	۸.	Yes.
1171	A:	
1172		Okay. Would you describe Mr., uh, Moore as being under the influence of
1173	Q:	some type of narcotic substance?
1174		some type of narcotto substants.
1175		A walto ha yas
1176	A:	Appeared to be, yes.
1177		Appeared to be, okay. Um - would you describe Mr. Moore as having, um -
1178	Q:	Appeared to be, okay. Off - would you deserve that being - having - drunk in any way, like the general object of symptoms of
1179		being - having - drunk in any way, like the general edges of
1180		somebody under the influence of alcohol?
1181		time symptoms of alcohol but I wasn't
1182	A:	Uh - I didn't notice the objective - objective symptoms of alcohol, but I wasn't
1183		really very close, paying super-close attention in the initial contact.
1184		
1185	Q:	Okay. Do you recall inside the apartment in plain view if you saw any kind of
1186	٧.	contraband, illegal - legal items in the apartment?
1180		
	۸.	I don't.
188	A:	
1189	0.	Okay.
1190	Q:	•
1191		Were you advised at any point by any parties who were on careen whether
1192	Man:	there were weapons, uh, in the presence?
1193		there were weapons, un, in the pressure
1194		27 1 I
1195	A:	Not that I can recall.
1196		
1197	Man:	Okay.
1198		At any point, did Mr.
1199	Q3:	Did, uh - (Harry) Stern with a couple of questions. At any point, did Mr.
1200	-	Moore express, uh, the fact that he was having trouble breathing or needed
1201		medical assistance?
1202		
1203		No.
1203		a 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1205		And is it fair to say that during the course of the struggle, up unto a certain
1203		point, he was jelling or speaking or making noises?
1207		He was screaming. Loudly.
1208		
1209		Okay. And - can you pinpoint a place in time where that stopped, if it
1210		stopped?
1211		2inhhea:
1212	2	

1258		If I remember correctly, when he was prone, his face was tilted to his right.
1259	A:	
1260		At any point, did anybody put any pressure on his neck or on his head?
1261	Q3:	At any point, and any sody passer, i
1262		No
1263	A:	No.
1264		I don't have any other questions.
1265	Q3:	
1266		Yeah, you - you were talking about, um - what Mr. Moore was saying
1267	Q2:	the time that (Miles (Brown) Informed I
1268		warrant, and he started getting more angry. What was he doing physically
1269		around that time?
1270		
1271		He was - he seemed real antsy, kinda fidgety, he was - he couldn't stand still,
1272	A:	He was - he seemed real antsy, kinda riegely, all was - was - kinda rockin' back and forth and stuff, movin' his arms around,
1273		Was - Was - Kinda Tockin oder dire 10 war His
1274		and - and lookin' all over. His
1275		TYY 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1
1276	Q3:	Was he sweating?
1277		v 1 to markon
.278	A:	I don't remember.
1279		
1280	Q2:	That's it for me.
1281		anna add?
1282	Q3:	Big (John)? Anything else you wanna add?
1283		
1284	A:	No.
1285		Thinkin'. Give me a - give me a second., uh - uh, you had a chance to speak
1286	Q:	Thinkin'. Give me a - give me a second, and day you are
1287		with Mr. Hayes, the reporting party, correct?
1288		
1289	A:	I - I didn't speak to him.
1290		11. No conversation took place.
1291		Oh, you didn't speak to him at all. No conversation took place.
1292	-	
1293		No.
1294		tion him in any way as to, uh, why he
1295		Okay. Got it. Did you - did you question him in any way as to, uh, why he
1296	-	called or what was Mr. Moore's, un, condition was et eeters,
1297		(Unintelligible)?
1298		'cause she's
1299		No. When he walked up, I just directed him to Officer (Brown), 'cause she's
1300		the handling officer.
130		24. Mr. Hoyec
1302		Got it. So you had no conversation with Mr. Hayes.
1504	۷٠	

1 2		
3 4		
5		
6 7		INTERVIEW WITH OFC. (BRANDON) SMITH
8 9		Q=Sgt. Hong Q1=Det. Johnson
10		Q2=(Sarah) Burdick
11 12		A=Ofc. (Brandon) Smith
13		
14 15	Q:	February 13, 2045 hours. Interview with Officer (Brandon) Smith. I am Sergeant Hong, H-O-N-G.
16 17	Q1:	Detective Johnson, J-O-H-N-S-O-N, badge 26.
18 19	Q2:	(Sarah) Burdick with (Raines), (Luche), (Estern), B-U-R-D-I-C-K.
20 21	A:	Officer Smith - Officer (Brandon) Smith, S-M-I-T-H, badge number 3.
22 23	Q:	All right. Officer Smith, could you state your rank and badge number?
24 25 26 27	A:	I am an Officer, badge number 3.
	Q:	And what was your uh, hi- what was your hire date with um, BPD?
28 29	A:	Uh, sworn date was December 13 of 2002.
30 31	Q:	Do you have any prior law enforcement experience prior to uh, BPD?
32 33	A:	No.
34 35	Q:	Uh, which Patrol Operations Team did you work yesterday's shift?
36 37	A:	Team 4.
38 39	Q:	Is that your normal uh, patrol team?
40 41	A:	Yes.
42 43 44 45	Q:	From here on out if I say yesterday I'm referring to February 12, Tuesday. Okay?

91		
92	A:	No.
93		
94	Q:	Do you have any medical conditions?
95		
96	A:	No.
97		at a second bourlance
98	Q:	Prior to yesterday's shift when was the last time you slept and how long?
99		and a second second Tuesday
100	A:	Uh, I slept when I got off of work um, which would have been Tuesday
101		morning approximately 8:00 am and I woke up at approximately 2:30 to 3
102		o'clock in the afternoon.
103		
104	Q:	Okay. Did you sustain any injuries during yesterday's incident?
105		
106	A:	No.
107		
108	Q:	Do you wear corrective eyeglasses or contact lenses?
109		•
110	A:	Yes.
111		
112	Q:	What were you wearing yesterday?
113		
114	A:	Contact lenses.
115		
116	Q:	Regarding your uniform and duty belt, starting from the front belt buckle
117	-	going clockwise would you describe what - could you describe what duty gear
118		is on your duty belt?
119		
120	A:	I have uh, a key silencer with keys. Next to that I have uh, a set of handcuffs
121		with a carrying case. To the right of that I have my duty weapon holster. Un,
122		to the right of that as we circle around towards my back I have my OC
123		canister. On the left rear side I have a flashlight holder. Did not actually have
124		a flashlight in it. Um, next to that I have my radio holder and my radio. Next
125		to that I have a baton ring. Next to that I have an asp. Uh, then directly in front
126		on the left side I have my magazine case with magazines.
127		
128	Q:	All right. Did your duty belt or gear sustain any damage?
129	Q.	
130	A:	No.
131	Α.	110.
	0.	What vehicle make and model were you driving during yesterday's shift?
132	Q:	What volucie make and model was journel and of
133	۸.	It was a Ford Crown Vic. Um, the City identifier is 1744.
134	A:	It was a rold crown vic. Only the only resemble to a constant
135		

patrol car and ran back upstairs to Apartment 514. (Moore) was on the bed on 181 his stomach resisting Officer Tu and Officer (Brown). Officer Tu had 182 (Moore)'s right wrist in a handcuff and Officer (Brown) was trying to gain 183 control of (Moore)'s left wrist. I helped Officer (Brown) get (Moore)'s left 184 arm behind his back so that he could be placed in handcuffs. During the 185 incident (Moore) continued to struggle and pull his arm away from us. As soon as (Moore) was placed into handcuffs other officers arrived and I went 186 187 back downstairs to ensure that (Hayes) was still in the back of my vehicle and 188 okay. I removed (Hayes) and searched him, removing all of his property from 189 his person and placed it into a paper bag. Officer (Kaplan) transported (Hayes) 190 to the Berkeley Jail and booked him for his warrant. I contacted (Hayes) in the 191 Berkeley Jail and obtained a signed written statement from him. (Hayes) said 192 in summary that he lives with (Moore) at 2116 (Alston) Way, Number 514. 193 And they have known each other for about 15 or more years. He said that 194 (Xavier) has used many drugs on a regular basis since he has known him and 195 that he mostly uses crack and methamphetamine as well drinks alcohol daily 196 to get drunk. He said that on 2-12-13 when he returned home around 5:00 to 197 6:00 pm that (Moore) was high on methamp- phetamine and was drunk. He 198 said that when (Moore) is high and drunk he is mean and wants to fight. He 199 said that (Moore) asked him for money to buy more alcohol and he told 200 (Moore) no. (Hayes) said that (Moore) became very angry and wouldn't leave 201 him alone. They were arguing and (Hayes) said that because he has a temper 202 he decided to try to ignore (Moore). (Moore) then told him to just leave. 203 (Hayes) said he then called the police who took him to the apartment where 204 they spoke with (Moore). He said that (Moore) was acting ziggity boom like a 205 motherfucker, quote, end quote. When asked what that meant (Hayes) said 206 that he was acting like he does when he's really high and drunk, quote, end 207 quote. (Hayes) said that (Moore) had threatened him earlier and thought that 208 (Moore) would attack him and that is why he left. He said that (Moore) had a 209 history of violence and he had stabbed someone in San Francisco a few years 210 pri- prior. See (Hayes)'s signed written statement for further. Nothing further 211 to report. 212 213 Okay. Do you have any (unintelligible)? 214 O: 215 I do. Yes. Q2: 216 217 All right. So you were on routine patrol. And were you dispatched to this call? 218 Q: 219 I was. 220 A: 221 And you were dispatched along with which officer? 222 Q: 223 Officer (Brown). 224 A:

225

271		
272	A:	He just said he needs to be 5150'ed. He's crazy.
273		
274	Q:	He used that term - 5150?
275		
276	A:	Yes.
277	11.	
278	Q:	Okay. Did he say anything about weapons or anything like that?
279	Q.	
	A:	Um, when we asked if there was any weapons - if he had any weapons he said
280	A.	that there was uh, there were knives in the kitchen but that he didn't know that
281		- if (Moore) had any on him.
282		- II (Woole) had ally on him.
283	0	Okay. Did he tell you if anybody else other than (Moore) was in the
284	Q:	
285		apartment?
286		Y71 1 1'1
287	A:	Uh, he did not.
288		Okay. And uh, based on this information you - all four of you now just
289	Q:	Okay. And un, based on this information you - an four of you he wights
290		proceeded back up to the uh, apartment?
291		
292	A:	Correct.
293		the state of the s
294	Q:	Okay. Um, did you bring any special equipment with you other than your
295		standard duty belt and your uniform?
296		
297	A:	No.
298		
299	Q:	So yourself, Officer (Brown), Officer Tu, and Mr. (Hayes) go up to the
300		apartment. And when you arrived uh, at uh, Apartment 514 was the door open
301		or closed?
302		
303	A:	It was closed.
304	1 1.	
305	Q:	Okay. Uh, who uh, and Mr you said Mr. (Hayes) assisted in entry? Is that
305	Q.	correct?
		College
307	Α.	Correct. He used his key to unlock and open the door.
308	A:	Confect. The about this key to announce of
309	_	Mm hm
310	Q:	Mm-hm.
311		And then he stanged to the side
312	A:	And then he stepped to the side.
313	-	OI The record you at this point able to see incide?
314	Q:	Okay. Uh, were you at this point able to see inside?
315		

361		- 11 I I work of the EDIO
362	Q:	You mentioned he - he - he spoke of the FBI?
363		
364	A:	Correct.
365		1 7770
366	Q:	Okay. What was he saying about the FBI?
367	- 00	
368	A:	Um, that the FBI was watching him. Um, I recall him saying something
369		gimilar to up, that he had to talk to the FBI to see II he could speak will us
370		because he wasn't sure that we were police. Um, I think that's kind of - that -
371		that came up several times during the entire conversation.
372		
373	Q:	Now during this period of time while you were observing um, Mr. (Moore)
374	Q.	did you notice if he was under the influence of any type of drug o- drug or
		alcohol?
375		
376	A	Um, he appeared to be under the influence of some sort of narcotics. His
377	A:	nunils appeared to be dilated. Um. he was very, very fidgety um, constantly
378		pulling his clothes, scratching at his body um, could not sit still, hands were
379		constantly moving in motion. Uh, he had hard time standing still as well.
380		constantly moving in motion. On, he had been
381	_	Okay. I forgot to ask but w- how was he dressed?
382	Q:	Okay. I forgot to ask but w- now was he dressed.
383		Uh, he was wearing a blouse of some sort that was uh, like a half shirt so his
384	A :	belly was exposed. Um, I think it was more of a - I don't even know what
385		they're called um, but it was tight above the chest, went under the armpits.
386		they're called um, but it was tight above the chest, went under the damp
387		Can you help me with that? Do you know what those are called? Halter top?
388		
389	Q2:	Tube top?
390		it it better being high so the helly was
391	A:	Tube top - kind of a tube top with the bottom being high so the belly was
392		exposed and a skirt. I believe it was flower print um, that was probably knee
393		high.
394		
395	Q:	Okay. Do you remember what color this flower print skirt was?
396		
397	A:	Multi-colored.
398	1.1	
399	Q:	Bright colors or earthly tones?
400	Q.	Daigno com
	A:	I don't recall.
401	M_{\bullet}	
402	0	Okay. Um, now uh, did m- did Officer uh, (Brown) give any direct orders to
403	Q:	Mr. (Moore) at this point while you guys are still outside the apartment?
404		IVII. (IVIOOLO) de dino pome
405		

451		- 1 . 1 I handed it to her
452	A:	I pointed at it when I handed it to her.
453		
454	Q:	Right.
455		1.1. (1
456	A:	And it appeared that her eyes went to it.
457		- 1. 2. C. (2. C.) 1
458	Q:	Okay. Did Mr. (Moore) have a warrant of any sort?
459		Tolorow goving that he had a warrant
460	A:	I did not get anything back from Telecom saying that he had a warrant.
461		
462	Q:	Mm-hm.
463		1 4 Ially do if
464	A:	Um, prior to me arriving on scene um, something that I commonly do, if
465		there's a um if there is a person who is involved in the incident of the call that
466		somes in and I have a name I will run that name to see who it is that I in
467		he dealing with potentially I m and I did do that with (Moore) on my
468		war there And a 10K warrant out of San Francisco came up but I didn't have
469		a birth date. So I did not know for certain if that was them or not but when i
470		ran his name through Telecom they didn't come back with any warrant.
471		
472	0:	With the exception of the cau- with - with
	Q:	William of the same of the sam
473	۸.	With (Hayes).
474	A:	With (Hayes).
475	0	Yeah, with - with (Moore) - with the exception of
476	Q:	Tean, with with (1.16616)
477		Of the caution code.
478	A:	Of the Caution code.
479	_	the continuodo
480	Q:	the caution code.
481		
482	A:	Correct.
483		All right, but you - you suspected Mr. (Moore) had a \$10,000 warrant based
484	Q:	on your research but without the - without the birth date? Did you believe it
485		on your research but without the - without the birth date. Bit you see
486		was him at the time?
487		
488	A:	I wasn't sure.
489		No who decided to take Mr
490	Q:	Okay. All right. So um, at what point was Mr. uh, who decided to take Mr.
491	-	(Hayes) on the warrant - Mr. (Hayes)?
492		T. 111 Ab-A serie vising. I vising
493	A:	Um, Officer (Brown) 'cause I told - when I told her that we were - I was
494		standing by to confirm the war- warrant she said, "We might as well take

585	Q:	Okay.
586		
587	A:	Though I saw the door was still open, there were a couple neighbors who were
588		looking out and as I ran they just kind of pointed.
589		
590	Q:	Okay.
591		
592	A:	And so I went into the apartment.
593		
594	Q:	Okay so when you went into the apartment and what was the first thing you
595	ζ.	observed when you uh, looked inside the apartment?
596		Sobotivos visitas y a mining
597	A:	Uh, I saw Officer Tu um, looked like he was behind uh, (Moore) who was on
598	Λ.	his belly on a mattress. Um, and Officer (Brown) was on the left side of
599		(Moore) trying to grab uh, an arm.
		(Woole) trying to grab an, an arm
600	O+ **	Okay. So you saw Officer (Brown) grabbing for the left arm.
601	Q: **	Okay. 30 you saw Officer (Diown) gracoing for the feet dis-
602	A .	Compat
603	A:	Correct.
604	0	And when you saw Mr., Officer Tu behind Mr. (Moore) can you describe a
605	Q:	And when you saw ivil., Officer Tu behind ivil. (Woode) can you describe a
606		little bit more in detail uh - uh, what he was, what Mr., what Officer Tu was
607		grabbing in terms of Mr. (Moore)'s body.
608		
609	A:	He had uh, he was - he was mostly laying on uh, (Moore)'s legs um, and kept
610		getting bucked up in the air. Um, and he had (Moore)'s right arm back behind
611		his back, um, and at that time I didn't realize it but he had, actually had a
612		handcuff on that hand.
613		
614	Q:	On the right hand.
615		
616	A:	Correct.
617		
618	Q:	When you said that Officer Tu was getting bucked by Mr. (Moore) does that
619		mean Officer Tu was on top of Mr. (Moore) at that time, but more towards the
620		lower half of his body you were saying?
621		
622	A:	Yes.
623	7 1.	
624	Q:	Okay. When you say uh, and so he was trying to restrain Mr. (Moore) he had
625	۷٠	a cuff on his right arm, and but he was essentially uh, wo- would you say that
626		Officer Tu was using his weight to control Mr. (Moore) at that point?
		OTITION IN MAD ADMY IND MANDERS TO DOMAN A TITLE (TITLE TO)
627	۸.	Um, yeah somewhat.
628	A:	Oni, year somewhat.
629		

675 676 677 678 679 680	A:	At that point Officer (Brown) said, "We're gonna need two handcuffs." And asked me if I had mine, I told her mine were on my prisoner in my car. Um, and I'm not sure if Officer Tu pulled out a - a set or where another set came from, but another set appeared, um, they clasped one set with the set that was already on his right wrist, and then we attached 'em to the left wrist.
681 682 683	Q:	Okay. So the handcuffing was completed and successful by the three of you? Or at that point had other officers arrived?
684 685	A:	At that point I believe it was just us three.
686 687 688	Q:	Were able to handcuff him.
689	A:	Yes
690 691 692	Q:	Okay at that point. Now at that point had officers started, other officers had started to arrive?
693 694 695	A:	Yes other officers were - were coming in while we were finalizing the handcuffing.
696 697	Q:	I got it.
698 699 700 701 702 703	A:	Um, and then I turned around and saw a few officers standing directly behind us. Um, the person was in custody uh, or handcuffed, detained, and I kept seeing more officers, like I think I saw a Sergeant come in, um, and at that point I said, "I have got to go back downstairs, I have a prisoner in my car handcuffed." So I wanted to go back down and make sure that they were okay.
704 705 706	Q:	Okay. Mr. (Moore) is successfully handcuffed, other officers have arrived, and uh, is he still fighting at this point?
707 708 709	A:	Yes he's kicking, screaming, cussing, um, just very, very animated, very angry, bucking, trying to pull his arms back, all kinds of stuff.
710 711 712 713	Q:	Well during the time when you, Officer Tu and Officer (Brown) were struggling with Off- with Mr. uh, (Moore) was he yelling something? Yelling anything to you? Saying anything?
714 715 716 717 718 719	A;	Yeah he just kept yelling uh, I believe I heard fuck you, um, stop, I'm not gonna go, um, just a lots of, lots of rambling. Um, and we kept telling him to stop resisting. Uh, just give us your arm, just give us your arm. And he kept saying no I'm not going to.

763 764 765	A:	Um, I - I di-, went directly to my car, I pulled uh, Mr. (Hayes) out of the car, and uh, made sure that he was okay. And then continued on with my search of him to empty his pockets to take him to jail for his warrants.
766 767 768	Q:	And so at, did, after you did, completed the search did you drive back towards the station?
769 770 771 772 773 774 775 776	A:	No I uh, after I completed the search I put him back in my patrol car, um, and then I waited um, in front of the address because I heard radio traffic where they were asking for um, for an ambulance. Uh, they were asked for BFD uh, with a gurney, and shortly thereafter I - I heard them say I wanna say they said uh, he stopped that the subject had stopped breathing, starting CPR. Um, and so at that point I figured I - I needed to stick around rather than just take (Hayes) to the jail.
777	0.	Okay.
778	Q:	
779	A:	So (Hayes) stayed in my car, and I stayed in front of the address.
780 781	Α.	
782 783	Q:	Okay so but, okay got it. Uh, at what point did uh, at what point I understand you gave custody of Mr. (Hayes) to Officer (Kapland)?
784		Correct.
785	A:	Confect.
786	0.	Okay. How did that, why, and how did that transfer?
787	Q:	
788 789 790	A:	After - after a little while BFD came down with uh, Mr. (Moore) on a gurney, uh, put him in the ambulance and drove away.
791		
792	Q:	Mm-hm.
793 794 795	A:	Um, and at that point I went over to Sergeant Ross who was standing in - in front of the address and said, "Due to the situation is it, is there a possibility I
796		can get one of the other Officers down here who's not involved um, to
797		transport (Hayes) and book him into the jail?" And that's when Officer
798		(Kapland) said that he would do it.
799		occ (II 1 1) was outside with
800	Q:	Officer (Kapland) was outside with
801		Compet
802	A:	Correct.
803	0	Officer Ross at the time.
804	Q:	Officer robb at the wine.
805 806 807	A:	Yes.

853		
854	A:	I just went there to assist.
855		
856	Q:	Okay.
857		
858	A:	I - I, as I was going up I thought that Mr. (Moore) may have attacked them.
	л.	That's how agitated he was during the interaction.
859		
860	_	Got it. Now during the time when you were, and you yourself were assisting
861	Q:	in the struggle with Mr. (Moore) with Officer Tu and Officer (Brown) uh,
862		in the struggle with wir. (whole) with Officer to the officer
863		before I ask that question; what is your height and weight?
864		
865	A:	I'm 5'10'', 235 pounds.
866		
867	Q:	Do you consider yourself uh, a strong person?
	Q.	D0
868		I do.
869	A:	1 do.
870		Okay. Now considering you were with Officer Tu is also a large Officer build
871	Q:	wise, and yourself, were you guys having a very, a difficult time with Mr.
872		
873		(Moore)?
874		
875	A:	Yes.
876		
877	Q:	Okay. Did you feel that Mr. (Moore) uh, at certain points was overpowering
	Q.	you - you guys?
878		you - you gayo.
879		At - atom points ves
880	A:	At certain points yes.
881		1: 1 falt that uh, wh. Mr. (Moore) in anyway ilh.
882	Q:	Yes. Um, and so you, did you felt that uh - uh, Mr. (Moore) in anyway uh,
883		scratch that. So while you, Officer Tu and uh, Officer (Brown) were
884		struggling with Mr. (Moore) did you, yourself and or Officer Tu or Officer
885	1.2	(Brown) the three of you, did you witness any use of uh, hand strikes, open
886		palm strikes or fist strikes by Officers on to Mr. (Moore)?
		po
887		No.
888	A:	140.
889		Did you witness or did you yourself use any type of baton strikes?
890	Q:	Did you witness of did you yourself use any type of outer and
891		
892	A:	No.
893		
894	Q:	Did any other officer or you uh, deploy your OC and use it?
895	٧.	
896	A:	No.
	л.	A 1 50
897		

942 943 944	Q1:	Okay - okay. Did you see at any time, or any time after that he appear to place any weight on Mr. uh, (Moore)'s upper body while he was prong in that position?
945		
946	A:	No.
947		A CO CO CONTRACTOR OF THE PROPERTY OF THE PROP
948	Q1:	Okay. Did he uh, did it appear at that time that um, Mr. (Moore) was able to
949	V 1.	breathe? Was he making any verbal, was he speaking or yelling?
950		
951	A:	Yeah he was yelling at us.
	Α.	Tour and the g
952	01.	Okay.
953	Q1:	Okay.
954		So I assumed he was breathing.
955	A:	
956		Was at any point during this did you see anyone put any weight on Mr. uh,
957	Q1:	Was at any point during this did you see day sair y
958		(Moore)'s head or neck area?
959		
960	A:	No.
961		17 11 1 11 12 let I have for now
962	Q1:	Okay, uh, and I think that's what I have for now.
963		in any he mentioned you didn't
964	Q2:	Um, as he was screaming, as he was yelling uh, he mentioned you didn't
965		recall him saying he needed any medical attention. Could you recall him ever
966		saying that he couldn't breathe?
967		
968	A:	No.
969	~	
970	Q2:	Okay.
971	Q2.	•
972	Q:	As me, tell me if I ever asked you this; have you ever had any prior contacts
973	Q.	with Mr. (Xavier Moore)?
973		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
	۸.	Not to my knowledge.
975	A:	Not to my know to be
976	0	Do you have any prior knowledge of Mr. (Xavier)?
977	Q:	Do you have any prior take was a
978		Ma
979	A:	No.
980		That's all I have. Is there anything you'd like to add Officer Smith?
981	Q:	That's all I have. Is there anything you a fixe to do a
982		
983	A:	Nope.
984		1 - 6:-tamiow with Officer (Rrandon) Smith
985	Q:	It is currently 2128 hours end of interview with Officer (Brandon) Smith.
986		*

1		
2		
2 3		
4		
5		
6		
7		INTERVIEW WITH OFC. (BRIAN) MATHIS
8		Q=Sgt. Hong
9		Q1=Det. Johnson
10		Q2=(Sarah) Burdick
11		A=Ofc. (Brian) Mathis
12		
13		
14	Q:	So February 13, Wednesday, 1710, 3:10 pm, ah, this, ah, an interview with
15	V •	(Brian) Mathis, Officer (Brian) Mathis and Case No. 13-08510. I am, ah,
16		Sergeant Hong, H-O-N-G.
17		borgount riong, ir o re ov
18	Q1:	Ah, Detective Johnson. It's actually 5:10 pm. And that's Johnson, J-O-H-N-
19	Q1.	S-O-N.
20		
21	Q:	That's right. For the record 5:10 pm.
22	Q.	That Bright 1 of the total 1 of party of the
23	Q2:	(Sarah) Burdick with (unintelligible), last name B-U-R-D-I-C-K.
24	QZ.	(burail) Burailly William (distributions)
25	A:	Officer (Brian) Mathis, Badge No. 80, ah, last name is M-A-T-H-I-S.
26	71.	Officer (Brian) Manney Burge 1997 and
27	Q:	All right Officer Mathis you signed the, ah, the waiver. Correct?
28	٧.	This right of the order of the angles of the order of the
29	A:	Yes I did.
30	11.	
31	Q:	Okay. So Officer Mathis could you state your rank and badge number?
32	٧.	
33	A:	I'm a patrol officer and my badge number is 80.
34	2 1.	I III a patrox oznace i i i i i
35	Q:	Eight, zero?
36	Q.	
37	A:	Eight, zero. Correct.
38	7 1.	Eight, 20101
39	Q:	What was your hire date with Berkeley Police Department?
40	٧٠	The state of the s
41	A:	Um, June 12th or the 13th of 1999. And then my badge date is December
42	11.	16th of 1999.
43		
44	Q:	And do you have any prior law enforcement experience before BP?
45	٧٠	Time do Jou mare any prior and a series and
73		

	Q:	Yesterday's shift was Tuesday and so the day prior being?
92 93	A:	Monday.
94 95	Q:	Monday. All right.
96 97	A:	I'm sorry.
98 99	Q:	Have you taken any medication? Prescription or otherwise?
100 101	A:	No.
102 103	Q:	Have you consumed any alcohol in the past 24 hours?
104 105	A:	No.
106 107	Q:	Do you have any medical conditions?
108 109	A:	No.
110 111 112 113 114 115 116 117	Q:	When was the last time you slept, ah, and how long and how many hours, ah, so twice. Before this interview and, ah, before the time of incident?
	A:	Well it's - we'll work backwards. Ah, last night probably got - so from six, six and a half hours last night. Um, and then the night prior. So going into Tuesday that was probably seven and a half. Seven, seven and a half. Something like that. It's my normal, you know, my normal - my normal work week I usually get seven or so.
119 120	Q:	Okay. Did you sustain any injuries during, ah, yesterday's incident?
121 122	A:	No.
123 124	Q:	Do you wear corrective eyeglasses or contact lenses?
125 126	A:	No I do not.
127 128 129	Q:	Ah, starting from the front of your belt buckle going clockwise could you describe what duty gear is on your duty belt?
130 131 132 133 134 135	A:	Ah, a set a cuffs, um, next is my service weapon, um, followed by my ass, followed by a key holder, followed by another set of cuffs of which there wasn't a second pair in there because an officer from the night prior did not return them to me. Um, that is then followed by a flashlight. Um, then a - a canister of OC and then my, ah, ah, radio. And then, um, and I have - I have a

181		floor. I grabbed both of the subject's ankles in an attempt to control the legs
182		because the subject was kicking at the officers. I crossed - I crossed his
183		ankles um trying to hold him down but got kicked off. I reacquired my grip
184		and was - I reacquired my grip and was able to stop the subject from kicking.
185		I was given an ankle restraint strap from the wrap and applied it the subject's
		ankles with assistance from another officer. I left the apartment to return to
186		my patrol vehicle to retrieve, um, (unintelligible) and escort BFD upon their
187		arrival. I heard a broadcast that CPR was being performed in the apartment
188		prior to BFDs arrival on the scene. I accompanied BFD back up the stairs to
189		prior to BFDs arrival on the scene. I accompanied by black up the states to
190		No. 514. I was assigned by Sergeant Cardoza as 31 to attempt to contact
191		residents of the surrounding apartments. At No. 515, which is the door to the
192		west of 514, I got no answer. At 513, which is the door to the east of 514, I
193		contacted roommates (Gabriella Carvello) - I believe it's pronounced and
194		(Jorge Tolletto). Um, they both told me that they had been watching TV when
195		they heard three loud thumps on the wall from 514 sometime around 2300
196		hours. The thumps were loud enough to startle (Carvello) and (Tolletto) but
197		they heard nothing else over their TV until the police arrived sometime just
198		after 2400 hours. (Tolletto) also told me that, "She," and then I put in res- um,
199		referring to (Xavier Moore), um, "has knocked on my door a couple times and
200		offered me recreational drugs." At, um, 512, um, which is the door to the east
201		of 513 um, the residents told me that they had not heard anything until, "The
202		police arrived." Um, I stood by as ID Tag Jamison, No. 452, took photos in
202		514 - in No. 514. When she was finished I locked the door and returned the
		keys to the BPD jail. Case disposition as said.
204		keys to the Bi B jan. Case disposition as sure.
205	0	All right. All right. Um, I'm gonna s- start by asking you, um, about where
206	Q:	were you when you heard the broadcast by, ah, Officer (Brown)?
207		were you when you heard the broadcast by, an, officer (Brown).
208		A Addison and MIK
209	A:	Ah, Addison and MLK. I was westbound to Addison and MLK.
210		11 d
211	Q:	Okay. And do you recall the words used in the broadcast?
212		way, and additional unitary or
213	A:	Just something similar that I put in the report. "We need additional units," or
214		something and the tone of, um, Officer (Brown)'s voice and I could hear the
215		struggle, you know, you can hear the sounds of struggle on the radio so I put
216		two and two so. But it - I believe the words were similar. She didn't say code
217		three cover. She said, "We need additional units here," or "Need more units
218		here," or something like that.
219		
220	Q:	And you responded?
221	4.	
222	A:	I responded code three.
222	Λ .	Tieohomes and an are

223

224225

Q:

Code three?

271		
272	A:	Yeah. I don't remember that third officer. I - I
273	11.	
274	0.	The third officer.
	Q:	The time officer.
275		I don't remember who that third person was.
276	A:	I don t remember who that third person was.
277	_	of the state of the section and the secretary
278	Q:	Okay. And you went upstairs and you went to the apartment. Correct?
279		1 111
280	A:	Yeah. I - I told them which door was gonna open, ah, which was the door -
281		'cause I'm - I'm familiar with that building. And so I knew you enter in one
282		door of the elevator and it opens onto the courtyard area which isn't open. So,
283		ah. (Tim) (unintelligible) Gardner, um, was the first out. I don't remember if
284		I - I was the second one. And then we made our way into the apartment.
285		
286	0.	Okay. So when you went to the apartment was the door open or closed?
	Q:	Okay. So when you went to the apartment of
287		It was anon
288	A:	It was open.
289	_	or you give a general
290	Q:	Okay. When you went into the apartment could you give a general
291		description of the area in which this incident occurred?
292		T4
293	A:	Um, there was a - a - as - as you come in there's a, like, an entry area. It
294		turned out to be a bathroom to the, ah, to your immediate, um, left, which I
295		didn't - I didn't recognize as that coming in. And then the hall you take kind
296		of a half step. You have to kind of step around the door the way the door
297		opens in the entry. Kind of facing a little kind of open closet and - and then to
298		the right is where the hallway goes down into this main kitchen living room
299		area and that's - that's where they were. They were directly in line when you
		come down that hall, um, it's really short
300		Come down that han, and it o roany once.
301		Mary have
302	Q:	Mm-hm.
303		the state of the s
304	A:	um, they were right there. They were all - all down there on some type of
305		mattress or futon mattress or something like that.
306		
307	Q:	To your recollection it looked like some sort of mattress or futon?
308		
309	A:	Y- yeah. It was on the floor. It a mattress that was on the floor. I do
310		remember seeing it, you know, laying on the floor.
311		
312	Q:	And when you - when you say there were all the other officers were there,
	Q.	which officers were there when you arrived inside?
313		William Officers were affect than Jos arrains and arrains
314		

360		
361	Q:	Mm-hm.
362		Cut 1. In that that
363	A:	that would - and let the bulk of them take care of the upper body that - that
364		would be where I would be the most helpful. And that's what I went to deal
365		with.
366		
367	Q:	Okay. Um, knowing now which officers were there, could you name them
368	Q.	when you first arrived knowing now?
		milet you zers.
369	۸.	I wouldn't be able to tell where they are.
370	A:	1 Wouldn't be dote to the way
371		Yeah but who - who were inside there?
372	Q:	Teall but who who were historian
373	((G) (11))	
374	((Crosstalk))	
375		It was - it was Officer Tu, Officer Smith and Officer (Brown) - were the
376	A:	officers that were - were inside the apartment.
377		officers that were - were misute the aparameter.
378		And that - and having thought back con- considering what you know now
379	Q:	having thought back, does that sound correct? That it was - it was Officer Tu
380		having thought back, does that sound correct. That it was a war-
381		and Smith and (Brown) in there?
382		
383	A:	Yeah. I - I believe that's - yeah.
384		
385	Q:	Okay.
386		and the standards of the standard with Officer Smith
387	A:	'Cause I - I double checked - actually double checked with Officer Smith
388		because at - at some point how do you know if he had come in, I mean, there
389		were a lot of officers coming. And I was
390		
391	Q:	Sure.
392		at the last So I'm looking down at
393	A:	I was doing everything I could to just control feet. So I'm looking down at
394		feet trying not to get kicked myself which I did.
395		1 they on this mattress
396	Q:	And, ah, were they - were they on the ground or were they on this mattress
397		futon deal?
398		1 11 1.1 It didn't
399	A:	Well the mattress is on the ground, I mean, it's not much thicker. It didn't
400	30	appear to be a whole lot thicker than through this table.
401		
402	Q:	Got it.
403	× 18	

449			
450	Q:	¥	What - what was the body - what was, ah, the - when I say Mr. (Moore), Mr.
451			(Moore) is the subject that we're speakin' about that was resisting. Okay?
452			
453	A:		Correct.
454			
455	Q:		So when - when you were taking a hold of the ankles while others were, ah,
456	ζ.		dealing with his hands, etc., and trying to get him handcuffed, what - what
457			was Mr. (Moore)'s body position at that time?
458			was ivii. (ividoite) is doug position at that the
	۸.		Ah, face down.
459	A:		All, lace down.
460	0		E 1 Comme he 1 1 his feed your magning his front of his hody
461	Q:		Face down. So was he l- l- his face was down meaning his front of his body
462			was on the ground?
463			
464	A:		His chest
465			
466	Q:		Or on the mattress?
467			
468	A:		his m- yeah. His chest was on the mattress.
469			
470	Q:		Mattress?
471			
472	A:		Yeah. That's why I kind of have to mind figuring which ankle was which.
473	7 1.		2 0
474	Q:		Okay. You said that you - you heard through messages, verbal messages, that
475	Q.		he was handcuffed.
476			ne was nandouriou.
	۸.		Yeah.
477	A:		i can.
478	0		But you didn't actually see the handcuffs actually placed on him?
479	Q:		But you didn't actually see the handcuits actually placed on min.
480			
481	A:		Mm-mm.
482			of a standard from the
483	Q:		Okay. Got it. And then - and then you were able to, ah, get a strap from the
484			wrap? Is that correct?
485			
486	A:		Yeah. I, um, I think it was Sergeant - it was either Sergeant Cardoza but
487			Sergeant Phillips also came in the room. Um, is that 17? I'm sure on her
488			badge number. We'll - we'll go over that. But Of- Sergeant Phillips - one of
489			the two had - I know that - I know the wrap came from her car because I put it
490			back together but, um, I said, "Give me the legs." I - I - I told specifically
491			whoever had it, "Give me the leg strap."
492			
493	Q:		Okay. So
.,,	٧.		

539	Q:	Okay.
540	Α.	So. It just kind of stopped fighting.
541	A:	50. It just kind of stopped righting.
542 543	Q:	Let me backtrack just slightly. So, um, how tall and how heavy are you?
544 545	A:	Um, 6, just under 6'4" and I'm 245.
546 547	Q:	Okay. Would you consider yourself in shape?
548 549	A:	Yes.
550551552553	Q:	Okay. You said that, ah, that's just - Mr. (Moore) was able to basically have enough force to kick you away while you were just trying to grab his ankles. Is that correct?
554 555 556 557 558 359 560	A:	Yes. And I was - and I was using a fair amount of - of, ah, strength to do so because I - I could tell he was a big - I could see this was a very big person. Um, you know, kicking and a good-sized officer who's on the - on the back quarter of this individual so I - I knew that I - I needed to bring, you know, bring some of my size and strength and pull him with it but, ah, I - I quickly found out that I needed to, you - you know
561 562	Q:	Okay.
563 564	A:	use - use a little more.
565 566	Q:	Okay. Do you recall how tall and heavy Mr. (Moore) was?
567 568 569 570	A:	That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I don't know how tall.
571 572	Q:	Okay. But at the time you felt he was a large man?
573 574	A:	I knew he was a three plus.
575 576 577	Q:	Okay. So he - you knew at the time that you were struggling with Mr. (Moore) that he was a three plus?
578 579	A:	Oh yeah.
580 581	Q:	Okay. Got it. And you just couldn't tell really how tall he was.
582 583	A:	Right. I have no idea.

629		
630	Q:	Bare butt?
631		
632	A:	Yeah. And that's - I couldn't see further. I didn't know what else, you know,
633		I just couldn't see beyond that. I wasn't lookin' - lookin' because I had my -
634		my job.
635		my joo.
	0.	Okay. Um, now you said after the handcuffs were placed and you were able
636	Q:	to successfully restrain Mr. (Moore)'s ankles, um, the fight was over for the
637		sake of, ah, expression
638		sake of, an, expression
639		••
640	A:	Yes.
641		NII of maket sylvat you gove
642	Q:	and continue from there on. What - what you saw.
643		1 Cd 11- mhooven
644	A:	Um, somebody - whoever, um, maintained the control of the ankles - whoever
645		that other officer was, I got up and, um, there was a - somebody requested a
646		spit hood so up, with that I - I told - said, "I have them in my car." And so to
647		broadcast I stepped up, um, and stepped away from them and thought I told,
648		you know, anybody down that my vehicle, 1720, there's spit hoods in the
649		front of my duty bag which is in the passenger seat.
650		110110 02 1,
651	Q:	Okay.
652	Q.	Chay!
653	A:	So it's - they're in the front of that. Um, and then, ah, didn't hear an
	A.	acknowledgement or anything so I said, "I'll - I'll go down and get them."
654		And, um, I believe there was - the FD was on its way so
655		And, uni, i believe there was the i b was said way 1
656	_	01
657	Q:	Okay.
658		um, I went. Yeah. I figured I'll go down and do - do two things. I'll get
659	A:	um, I went. Yean. I figured I if go down and do - do two dimigs. I if go
660		the spit hood and then I can bring the FD up with me. Um, that's what I did.
661		I left the apartment.
662		1.1. 1.1. 414. was als Ma
663	Q:	Um, when he - when the struggle was subdued what - what was, ah, Mr.
664		(Moore)'s position while, ah, you guys were going for the - looking for the
665		spit hood, et cetera? What
666		
667	A:	Ah, it - at that time still he - he was, ah, still face down.
668		
669	Q:	Okay.
670	٨.	
671	A:	I mean, this is all - this all happened pretty quick.
672	Δ.	1 11 1 1 1
	0.	Okay.
673	Q:	Okay.

719	A:	Yeah. Yeah.
720 721	Q:	What you - what you, ah, said before?
722		Right.
723 724	A:	
724 725 726 727 728 729 730	Q:	Okay. Um, are you, um, at all, um, um, let me backtrack. Let me ask you this. So, ah, the officers who were there struggling with Mr. (Moore) at the time, right? And while you were struggling with Mr. (Moore), did you at all see any officer strike Mr. (Moore) in any way? Even with a hand or a closed fist?
731	A:	No.
732		
733	Q:	Did you see any batons usage by any officers on the scene?
734 735	A:	No.
736	71.	
737 738	Q:	Was there any other form of impact weapons that were used that you may have seen officers use on Mr. (Moore)?
739 740	A:	Not that I saw.
741 742	Q:	Was OC deployed by any officer on the scene?
743 744	A:	No.
745 746	Q:	Was a firearm at all every used during this incident by any officer?
747 748	A:	No.
749 750	Q:	Was a firearm, ah, duty weapon used as an impact weapon in any way?
751		No. 4 April 2007
752	A:	Not that I saw.
753 754 755	-	Okay. Um, are you at all, um, certified in drug recognition or (DRE) certified?
.756 757	A:	I'm not certified.
758 759 760	Q:	Okay. Are you - based on your training experience can you recognize somebody who is under the influence of - of, ah, illegal narcotics?
761 762 763	A:	Ah, yeah. With my basic - with my experience as an officer I'm pretty good at it.

809		Thora's there's several different things that
810	A:	Or maybe help wear them out. There's - there's several different things that
811		you can do. So you use every advantage you have. And when you're bigger,
812		you use that advantage.
813		
814	Q:	Mm-hm.
815		
816	A:	And that's kind of what he seemed to be doing was - was laying on him to try
817		to use it as body weight to keep him down or to control him as - as he was.
818		9
819	Q:	Okay.
820	Q.	
821	A:	That - that's what it appeared to
	A.	That that I what it appears
822	0.	Got it. And to your recollection he was doing so because of Mr. (Moore) was
823	Q:	not yet restrained in handcuffs? 'Cause he has not yet been restrained and he
824		not yet restrained in handeuris: Cause he has not yet established
825		was control Mr. (Moore)?
826		The state of the s
827	A:	Yeah. That's - I - by - by what saw I didn't think there were any cuffs on at
828		all.
829		
830	Q:	Got it.
831		lpha
832	A:	All right.
833		
834	Q1:	What part of Officer Tu was on what part?
835		
836	A:	He's laying, um, his feet when I come in, um, the - the wall that I talked about
837		as you walk down that hallway, ah, Officer Tu's pretty much on the
838		(unintelligible) on - on the right side of him. Kind of on the right so Officer
839		Tu's against the - the hody on the - on the right side I g- I'm guessing. Um,
840		but he was - he appeared to be more, like, tryin' to hold the hips and - and the
841		upper torso down. That's what it appeared. I mean, it's
842		
	0.	Did - did it appear that there was weight being put on the upper torso or just in
843	Q:	the hip area or both?
844		the mp area of bour.
845		Well yeah. I mean, that's where his body was 'cause that's where the feet
846	A:	were coming up 'cause he was actually down on the hips. He was - his -
847		enough of his body was down on the hips that he was kicked as, you know, as
848		I said, that swimming - that swimming motion that the - that Mr. (Moore)
849		I said, that swimming - that swimming motion that the - that with (whole)
850		doing was - was kicking or was bucking Officer Tu.
851		1.12 OCC 0 Whom when
852	Q:	And where was it hitting Officer? Where - where?
853		

899		three people that were there nobody was parked in front. I - I slipped right in
900		it - first to the scene.
901 902	Q:	Okay. (Unintelligible). One last - one real quick question which is while you were in the apartment during the struggle or at any time in the apartment,
903		could you hear Mr. (Moore) say that he needs an ambulance or medical
904		attention of any sort?
905		altention of any sort:
906		
907	A:	No.
908		1 Variation Wa'll take you back
909	Q:	Okay. And so you're now down - I'm sorry. We'll take you back.
910		
911	A:	Okay.
912		1'
913	Q:	You're down at your, ah, car getting a spit hood. Did you hear any radio
914	۷.	traffic that was of significance of or of a, um, that (unintelligible)?
915		
	۸.	I heard, um, it was - it was noisy downstairs. There was - there was - it's
916	A:	troffic and things going on down there but I - I heard doing CPK and I killd 01
917		- I - I turned to somebody else down there and I said, "Did I - did you just hear
918		that?" And the - then they confirmed, "Yeah. That's broadcast."
919		that?" And the - then they comminded, I can. That's erossian
920		
921	Q:	Mm-hm.
922		
923	A:	So at - at that point I was just waiting for, ah, I still waited for BFD.
924		
925	Q:	Okay. So you waited outside?
926		
927	A:	I still - I stayed by the door to make sure - that was still my - my job was to
928		get them up there as far as I was concerned.
929		
930	Q1:	So they can get into the building because
	QI	
931	Α.	Yes. I was gonna escort them through the doors, get to the
932	A:	1 CS. 1 Was golinia escott them 1220 hg.
933	0.1	Catta improst them
934	Q1:	Got to inspect them.
935		Right. And then - and literally we did when - there was a bunch of kids
936	A:	gettin' off the elevator and I parted the sea to get them out of the way and give
937		gettin' off the elevator and I parted the sea to get them out of the way and get
938		us a clear path to get in the elevator and get upstairs.
939		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
940	Q:	Okay. Um, so, ah, the - the radio broadcast you made regarding CPR, BFD
941	`	eventually arrives and you escort them upstairs. Is that correct?
942		
943	A:	Correct.
713		

989		
990	Q:	Okay.
991		But I don't know and - and now if I had to - I - I don't know what point he
992	A:	was there. Like, he may have been the guy that came up - the third one. Um,
993		of - of course there were - there were other officers that showed up to assist,
994		um, I know somebody else, um, Officer McIntosh was doin', ah, help with the
995		um, I know somebody else, um, Officer Memosir was dom, and note was domed to
996		area checks that we were eventually assigned to.
997		
998	Q:	Okay.
999		officer (Venlan) was - I don't remember if
1000	A:	Um, who else? Smith, um, oh, ah, Officer (Kaplan) was - I don't remember if
1001		he was actually there on the scene or he was downstairs to help trans-
1002		transport. I don't know if he was actually up on the scene now that I
1003		mentioned. No. He - he was there. I remember seeing his face.
1004		
1005	((crosstalk))	
1006		TO STAND FROM MILED MoIntoch McC-L-N-T-O-S-H
1007	Q:	Kast- Kastimiler is K-A-S-T-I-M-I-L-E-R. McIntosh, M-C-I-N-T-O-S-H.
1008		Kaplan is K-A-P-L-A-N. I'm sorry. Go ahead.
1009		The state of the s
1010	A:	Glad you did it. I wouldn't have remembered.
1011		
1012	Q:	Okay.
1013		Um, but, ah, that's, you - you know, as I - as I said, my - I don't - wasn't
1014	A:	really anything that I worried about, you know, focusing on who was there. I
1015		really anything that I worried about, you know, rocusing on who was there
1016		wasn't keeping track of names or anything. That wasn't my job to do that.
1017		So, um, at - at - at a certain point in time, the, ah, fire and paramedics took Mr.
1018	Q:	
1019		(Moore). Is that correct?
1020		37
1021	A:	Yes.
1022		Okay. And, ah, um, so they've - they've taken Mr. (Moore). And were they
1023	Q:	still working on him while they were taking him?
1024		still working on him white they were taking him.
1025		Ol the had a machina on him
1026	A:	Oh they had a machine on him.
1027		Oleve
1028	Q:	Okay.
1029	A =	They had some kind of machine that was workin' on him the whole time so I
1030	$A_{:}^{*}$	helped some. The only think I did - I did step back in as they were trying to
1031		get the gurney in and we need to get all that - that mattress stuff or whatever.
1032		It turned out that it was actually, like, two or th- two of them I think or
1033		It turned out that it was actually, like, two of the two of them?

			4,00
1079	Q:	Okay. Um, so who	en you do- after doing that you, ah, according to the police
1080		report you stood by	y while, ah, Crime Scene Technician Jamison, J-A-M-I-S-
1081		O-N, took photogr	aphs of the apartment?
1082			
1083	A:	Right.	
1084		_	
1085	Q:	514?	
1085	⟨.		
	۸.	L was assigned to s	security so he just told me to stand outside and let her do her
1087	A:	thing and assist if	everybody else needed anything. So.
1088		uning and assist in	by or y body erbe recent and a second
1089		. 1.1 1	on of this report you say that when she - she - Tech Jamison
1090	Q:	And the last portion	on of this report you say that when she sale
1091		finished you locke	ed the door and returned the keys to BPD jail.
1092			
1093	A:	Correct.	
1094			
1095	Q:	BPD jail. Return	it to whom?
1096	۷.		
	A:	IIm I gave them t	to one of the jailers, um, and I don't know this other party. I
1097	Α.	never caw him un	til that moment so I didn't - I had no contact. Apparently he
1098		mever saw mini un	e with this person so I - I have no contact with that
.099		was the roomman	keys were brought out to me by Officer Smith. This was an
1100		individual. Those	ater found out that Officer Smith had down in the car.
1101		individual that I is	iter found out that Officer Shirth had down in the out
1102		(Unintelligible) a	nd that he ran back upstairs I guess or somethin' when he
1103		heard the - the ca	Il for assistance. I - I'm not sure how that chronology
1104		worked. I don't k	mow. I don't know how that worked out but he was - I
1105		remember - reme	mber Officer Smith saying I got a guy in my car. I gotta go
1106		back down to my	car. You know, but, yeah.
1107		¥	
	0.	Um all right So	a couple follow up questions. So you never spoke to that
1108	Q:	cantleman voll as	ave the keys to. His name is Mr. (Hayes). You never gave
1109		gentieman you go	and any conversation with him.
1110		nim - you never i	ad any conversation with man
1111			
1112	A:	Um	
1113			
1114	Q:	Before or after?	
1115			and the same of th
1116	A:	No. You know v	what, and that - the only thing - I did say something to him,
1117	4.2.	um. at. like, leav	ing - as I was leaving the jail because the caretaker, Mr.
		(Edwards) or son	nething like that.
1118		(Lawards) of sor	
1119	^	No (Starling)?	
1120	Q:	No. (Sterling)?	
.121			

		and Officer (Brown) being
1212		who was doing what, that would be my - and - and Officer (Brown) being
1213		under the supervision of Sergeant Cardoza.
1214		
1215	Q:	Okay.
1216		
1217	A:	'Cause he's our team supervisor. So that's how's that kind of
1218		
1219	Q:	Ah, when you head the radio broadcast that, ah, there was - they were doing
1220		CPR on Mr. (Moore), did you hear before or immediately after a call for code
1221		three ambulance, medical? Did you hear any of that?
1222		
1223	A:	No. I didn't. I didn't hear it. I knew BFD was coming. I - I knew - I knew at
	Λ.	some point BFD was comin' so as far as the - the spit hoods and - and when
1224		they were - I - I don't recall, you - you know, how that, you know, request for
1225		medical and when exactly it happened. I - I didn't - I didn't hear I versus, you
1226		medical and when exactly it happened. I'm tutum to I dad the the transfer of t
1227		know, they say some could.
1228		
1229	Q:	All right.
1230		
1231	A:	And I didn't hear it.
.232		
1233	Q:	Okay. Was there any other rank, ah, present besides officer and sergeant on
1234		the team or anyone near the scene to your knowledge?
1235	47	value value and
1235	A:	No. Not that I recall. I - I don't recall seeing lieutenant or anything.
	A.	140. 140t that I focal. I I don't focal state of the stat
1237	0.1	I don't have anything
1238	Q1:	I don't have anything.
1239		The second of the second of the onlyles
1240	Q2:	Um, you said you applied the wrap strap to the ankles.
1241		
1242	A:	Mm-hm.
1243		
1244	Q:	I'm guessing it needs to be tight to be effective but was it so tight that it would
1245		cut off circulation in any way?
1246		
1247	A:	No. I - I don't believe so.
	Λ .	110. 1 1 40.1 1 0 0 1 1 1
1248	02.	Okay. And - now during the time that the subject was struggling with the
1249	Q2:	officers when you entered you mentions that - that your could hear the subject
1250		
1251		screaming, saying things?
1252		The state of the s
1253	A:	Yeah I didn't. It was just that it's - a lot of times you'll get them,, ah, people,
1254		not - not Mr. (Moore) specifically but they're just - they're just blood curdling
1255		scream, like, you know, you're - you're hurting them or you're trying to do
1256		this and it just - it's almost like a - I don't know. I - I - I was kind of

INTERVIEW WITH OFC. (BRIAN) MATHIS
Interviewer: Sgt. Hong
02-13-13/5:10 pm
Case # 2013-08510

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1302

1303 This transcript has been reviewed with the audio recording submitted and it is an accurate 1304

transcription. 1305

Signed____ 1306

1		
2		
3		
4 5		
6		
7		INTERVIEW WITH KASTMILER
8		Q=Sgt. Hong
9		Q1=Detective Johnson
10		Q2=Harry Stern
11		A=Ofc. (Nikos) Kastmiler
12		
13 14 15	Q:	February 13, 2139 hours. Interview with Officer (Nikos) Kastmiler. I am Sergeant Hong. H-O-N-G.
16 17 18	Q1;	Detective Johnson. J-O-H-N-S-O-N. Badge 26.
19 20	Q2:	I'm Harry Stern. S-T-E-R-N.
21 22	A:	And I'm Officer (Nikos) Kastmiler. That's K-A-S-T-M-I-L-E-R. Badge #104.
23 24 25	Q:	Thank you. Uh, state your rank Officer Kastmiler?
26 27	A:	I'm a Police Officer with Berkley Police.
28 29	Q:	What was the date of your hire with Berkley Police?
30 31 32	A:	Well, $I - it$ was uh, sometime in December of 2007. I don't remember the date exactly.
33 34 35	Q:	Do you have any prior law enforcement o- experience pri- uh – uh, prior to BPD?
36 37	A;	Uh, no.
38 39	Q:	Which patrol operations team do you work?
40 41	A:	Uh, Team 4.
42	Q:	Okay. What are the normal days work and normal hours work for Team 4?
44 45	A:	The uh, normal days are Monday through Thursday. The hours are 8:30 p.m. to 6:30 a.m.

91	Q:	Do you hold any other secondary jobs?
92		
93	A:	No.
94		
95	Q:	Did you work any overtime prior to yesterday's shift?
96	Χ.	
97	A:	No.
	A.	110.
98	0.	Have you any - have you taken any medication, prescription or otherwise?
99	Q:	Have you any – have you taken any incurcation, prescription of otherwise.
100		1' d' O I'll Italia wh Drangoja That's a it's
101	A:	Any prescription medications? Uh, yes. I take uh, Propecia. That's a – it's
102		just for hair loss.
103		
104	Q:	Okay.
105		
106	A:	But that's the only one.
107	4 **	
108	Q:	Uh, have you consumed any alcohol in the past 24 hours?
	Q.	On, nave you combanied any account in the part in the
109	A .	Ma
110	A:	No.
111		All the D. The summer disable and dispense.
112	Q:	All right. Do you have any medical conditions?
113		
114	A:	No.
115		
116	Q:	Before yesterday's shift, when was the last time you slept and how long?
117		
118	A:	Before yesterday's shift, uh, I slept from about 7:30 in the morning to about -
119		about 3:30 in the afternoon. That – so that would be Tuesday during the day.
120		
121	Q:	During the day Tuesday?
	Q.	During the day I debudy.
122	۸.	Yeah.
123	A:	i Caii.
124		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
125	Q:	And you reported to work Tuesday at 8:30 in the evening?
126		
127	A:	Correct.
128		
129	Q:	Okay. Did you sustain any injuries during yesterday's incident?
130		
131	A:	No.
132		
133	Q:	Do you wear corrective eye glasses or contact lenses?
133	٧٠	Do Journal Comment of a Dissert
	۸.	Yes.
135	A:	1 05.

181			
182 183	A:		Sure. On 02/13/13 at approximately 0030 hours, I heard Officer Brown say over the radio to "Send emergency cover." I responded to 2116 (Alston)
184			Way, #514 to assist. I arrived on scene and entered the apartment. I observed
185			a very large male, later identified as (Moore) laying face down on top of a
186			mattress with officers struggling to control him. Officer Two, Badge #38,
187			Officer Brown, Badge #16 and Officer B. Smith, number three, were
188			controlling (Moore)'s arms and legs as he struggled to break free from their
189			control. (Moore) was handcuffed and I assisted in controlling (Moore)'s arms
190			and preventing him from getting up. I remained with (Moore) – sorry, excuse
191			me – while waiting for BPD officer to bring a wrap device for (Moore). While
192			we were deploying the wrap, (Moore) stopped struggling. We rolled (Moore)
193			on to his left side. About a minute later, Officer (Brown) stated that, (Moore)
194			had stopped breathing. We checked for a pulse and noticed that he no longer
195			had a pulse. When we discovered this, we immediately removed (Moore)'s
196			handcuffs and laid him flat on his back. We began doing CPR on (Moore)
197			until BFD arrived on scene, began emergency treatment. I remained on scene
198			and contacted (Sterling). (Sterling) was inside the apartment with BPD
199			officers and (Moore) during the initial incident. (Sterling) provided a written
200			statement about the incident. See attached written statement.
201 202	Q:		Okay, thanks. Okay. So you were on routine patrol when you heard a radio traffic, correct?
203			77
204	A:		Yes.
205			A 1 '1 1 second on the delice money that the modes traffic axid
206	Q:		And you said, uh, according to the police report, that the radio traffic said
207			something to the effect of send emergency cover and that was made by
208			Officer Brown?
209			37
210	A:		Yes.
211	0		Ol William was a subsequent was been the radio traffic?
212	Q:		Okay. Where were you – where were you when you heard this radio traffic?
213			I I I I I I I I I I I I I I I I I I I
214	A:		I don't remember where exactly I was. I was somewhere on Beat 7 area. Um,
215			somewhere on my normal beat. I don't remember exactly though.
216			Of A 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
217	Q:		Okay. And you responded uh, in what fashion? Which code?
218			0.1.2
219	A:		Code 3.
220		547	O1 A 1 -1
221	Q:		Okay. And when you arrived uh – uh, how did you enter the building?
222			

268		
269	A:	I don't remember how many cuffs were used.
270	Λ.	1 doil t letter to the state of
270	0.	Okay. But even though he was handcuffed, you described him still actively
	Q:	resisting, is that correct?
272		resisting, is that correct:
273		Vac
274	A:	Yes.
275		Okay, like when you were saying that he tried to get – was he trying to – what
276	Q:	Okay, like when you were saying that he tried to get was no trying to what
277		- describe a little bit more in detail what he was doing as he was resisting
278		even though he was in handcuffs.
279		and the way twing to kink uh
280	A:	He um, I remember his legs were flailing around and he was trying to kick uh,
281		officers off of his legs. He was trying to basically stand back up it seemed
282		like.
283		1 (36 1
284	Q:	Okay. And what kind of force were you using to keep uh, control of Mr. uh,
285		(Moore)?
286		
287	A:	I was holding his two um, arms and uh, I was also using my shin and knee on
288		the back of his left leg to keep them stationary on the – on the mattress.
289		
290	Q:	Okay. Do you recall uh, while you were trying to uh, maintain control of Mr.
291		(Moore), (Xavier Moore) that's this deceased person, when you're trying to
292		maintain control of Mr. (Moore) what was - can you recall what Officer
293		(Two) was doing?
294		
295	A:	I – I
296		
297	Q:	If you can recollect?
298	⋖.	
299	A:	I remember he was there. Uh, I don't remember specifics on what he was
300	7 1.	doing. We were all trying to basically prevent him from getting up and
301		continuing the fight. I don't remember specifically what he was doing though.
302		Continuing the right 1 area of the right 1
302	0:	Okay, do you remember his positioning? What Mr. (Moore)
	Q:	Okay, do you tememoor me postate
304 305	A:	He was standing uh, opposite me and so if (Moore)'s laying on the ground, I
	Α.	was closest to his left side. Office (Two) was um, on his right side.
306		was closest to his left side. Office (1 110) 11db day, our respectively
307	0.	Dight side?
308	Q:	Right side?
309		Vach
310	A:	Yeah.
311	0	Is be an the ground or on the mattress?
312	Q:	Is he on the ground or on the mattress?

358		
359	Q:	Okay. So after the handcuffs are placed and was there a – well – do – do you
360	Q.	know, was it successful, Officer (Mathis) in restraining um, his legs? Mr.
361		(Moore)'s legs?
362		
363	A:	I – I could – I wasn't actively watching him so I don't know for sure. I do
364		remember his legs were flailing around.
365		
366	Q:	Okay.
367		
368	A:	But $I - I$ – again, I wasn't looking directly at what Officer (Mathis) was doing,
369		so I don't know.
370		
371	Q:	Uh, during – during this portion while you were present and Mr. uh,
372	~ 10	(Moore)'s – would you say that even though he was handcuffed, he was
373		actively still resisting?
374		actively still resisting:
375	A:	Yes.
	A.	165.
376	0.	Was be sulling anothing? Was be serving anothing?
377	Q:	Was he yelling anything? Was he saying anything?
378		
379	A:	No.
380		
381	Q:	Nothing?
382		
383	A:	No.
384		
385	Q:	He wasn't yelling at any point? At that time, he was quiet when uh, but he
386		was physically resisting but at that time he wasn't yelling anything?
387		
388	A:	Correct.
389		
390	Q:	When you were there? Okay, got it. Um - um, let's see. Did you, at all hear
391	ζ.	Mr. (Moore) uh, while you were there with him ver- verbalize and say, I could
392		- he – that he couldn't breathe or that he needed medical attention or that he
393		was hurt in any way?
394		was narr in any way:
395	A +	No.
393	A:	INU.
	OF	Okory Novy did you at all soo any officer to your recallection up mutting
397	Q:	Okay. Now, did you at all see any officer, to your recollection, uh, putting
398		pressure on Mr. (Moore)'s head or neck?
399	A	N
400	A:	No.
401		

447		or with the histogram and whore who Mr (Moore) was still
448	Q:	Okay. Um, did uh, during the brief moment where uh, Mr. (Moore) was still
449		struggling, did you hear any officers commanding – making any verbal
450		commands to uh, to Mr. (Moore) in any way? Telling him – giving him
451		orders to calm down? Giving him orders to stay still? What – whatever you
452		can recollect.
453		
454	A:	I do remember somebody saying to uh, calm down and stop resisting. I don't
455	11.	remember who exactly said that, but remember hearing that.
456		Tollowing was a state of the st
	0.	So he was placed on his side you said, correct?
457	Q:	50 file was praced on his side you bard, control
458		
459	A:	Yes.
460		1 1 1 1 1 0140
461	Q:	Do you remember which side, left or right?
462		
463	A:	Left side.
464		
465	Q:	Left side. And at this point, he's calm. He's not resisting anymore?
466		
467	A:	Correct.
468		
469	Q:	Okay. To the point of – so he's now calm and you mentioned early on in your
-470	ζ.	interview that he started having uh, difficulty breathing, is that correct?
471		
	۸.	Yes.
472	A:	1 65.
473	0	Okay, well how long was that time span between the time he went calm to the
474	Q:	time he started having difficulty breathing?
475		time he started having difficulty broating.
476		To the total and the second of
477	A:	I estimate it at maybe a minute or so.
478		16 de la la mana having difficulty or did
479	Q:	Okay. And uh, did you yourself notice that he was having difficulty or did
480		somebody - some officer say something that prompted you to uh, notice as
481		well?
482		
483	A:	No, well Officer (Brown) said uh, I – something uh, to the effect of, "I think
484		he's not breathing." At that point, I wasn't aware and uh, I tried to confirm
485		also.
486		
	O_{i}	You tried to what?
487	Q:	Tou tilou to man.
488	Α.	Tried to confirm that he wasn't breathing.
489	A:	11150 to commin that he wash t broatming.
490	0	Olean
491	Q:	Okay.

537		
538	A:	Uh, I remember Officer (Two) was doing the chest compressions.
539	11.	On, From the Cities (1110) was access to approximate
540	Q:	Okay. And then do you recall uh, if any officer summoned the paramedics?
541	ζ.	Onay, Time divin do you roum any is any orange of the second and it
542	A:	Yeah, I believe um, they were - they were summoned. I don't recall who was
543	11.	the first person to call for BFD.
544	5	the first person to our for Br B.
545	Q:	Mm-hm.
546	Q.	141111-11111.
547	A:	But I do remember hearing over the radio, somebody requesting paramedics.
548	A.	But I do Tementoer hearing over the radio, someoody requesting parameters.
549	0.	Okay.
	Q:	Okay.
550 551	۸.	I believe that was actually the initial point when he stopped uh, breathing.
551	A:	When we noticed that he was no longer breathing and had no pulse.
552		When we noticed that he was no longer oreating and had no puise.
553	0.	Olroy
554 555	Q:	Okay.
555 556	۸.	So earlier.
556 557	A:	So earlier.
557 558	0.	And uh, eventually – while you were still inside the apartment when the uh,
559	Q:	paramedics arrived, correct?
560		parametrics arrived, correct:
561	A:	Yes.
562	A.	i Cs.
563	Q:	Okay, what were you doing while uh, the others were doing uh, - well, certain
564	Q.	officers were doing CPR. What were – what were you doing at that time?
565		Officers were doing of it. What were you doing at man amount
566	A:	I was uh, controlling his right arm.
567	Λ.	1 was an, condoming instrigut arm.
568	Q:	Okay.
569	Q.	Okay.
570	A:	And also his right leg just in case – because he was no longer handcuffed.
571	Λ .	And also his right log just in case — occase he was no longer hand also
572	Q:	Yeah.
573	Q.	1 cuit.
574	A:	Um, if he did wake up, I didn't want him to be able to swing his fist and hit
575	Λ.	Officer (Two), while Officer (Two) was uh, giving him chest compressions
576		Officer (1 110), mille Officer (1 110) that any giving mill effect compressions,
577	Q:	Okay. And you kept doing that until the paramedics arrived?
578	ζ.	Oxaj. 1 ma jou kopi dome and and the parametres arrived.
579	A:	Correct.
580	Λ.	Collect.
200		

626 627		retrieve. Uh, clothing and also his wallet so we allowed him to grab that before securing the apartment.
628 629	Q:	Okay. And who's keys did you guys use to secure the apartment?
630 631	A:	I believe it was uh, Mr. (Hayes), (John Hayes).
632 633	Q:	How do you know Mr. (Hayes)?
634 635	A:	Uh, I − I learned about him from (Sterling) during the statement.
636 637	Q:	Got it.
638 639 640	A:	Um, yeah.
641 642	Q:	Okay. And after you uh, helped uh, secure the apartment, what did you do afterwards – after that?
643 644	A:	Uh, I'd went back to the police station to start writing supplemental report.
645 646 647 648 649	Q:	Okay. Couple more questions. One is, when you received the radio broadca- when you got prompted to go based on radio broadcast and when you went upstairs and you started assisting in uh, controlling Mr. (Moore), did you know at the time, why Officer were – why Mr. (Moore) was in handcuffs?
650 651	A:	No.
652 653 654 655 656 657	Q:	Okay. Um, uh, while you were there while Mr. (Moore) was in handcuffs and uh, and all the – all divisions you told us already, did you at any point see any of the officers, including yourself, strike Mr. (Moore) with uh, open hand or closed – closed fist?
658 659	A:	No.
660 661	Q:	Do you see any officer deploy uh, OC?
662	A:	No.
664 665	Q:	Did you – you see any officer uh, strike Mr. (Moore) with the baton?
666 667	A:	No.
668 669	Q:	Did you see any officer strike with any type of blunt object?
670	A:	No.

716		
717	A:	Yes.
718 719	Q2:	Do you ever have any prior encounters with Mr. (Xavier Moore)?
720 721 722	A:	Yes.
723	Q2:	Can you describe them?
724 725 726 727 728 729 730	A:	Yes. I um, I had some contacts with uh, (Xavier Moore) when he used to live at the uh, University Hotel on uh, University Avenue when I worked at Beat 3. Um, during those incidences, there was uh, disturbances and also fights involving himself and uh, other tenants. Um, there was also disturbance calls relating with him and uh, drug use um, specifically crack cocaine. Uh, disputes regarding that.
731		Did you ever have the opportunity to speak to one of his relatives about Mr.
732	Q2:	
733	N	(Xavier Moore)?
734 735	A:	Yes, I spoke to his mother.
736 737	Q2:	What was the nature of that conversation if you recall?
738 739 740 741 742 743	A:	Uh, Mr. (Moore)'s mother was concerned uh, about (Xavier)'s welfare. Uh, she expressed to me concerns of his uh, psychiatric behavior and also his uh, drug use. That she was concerned about – uh, she was also concerned that the location that he was living at uh, was not the best environment and also not the safest for him specifically.
744		I 1 .24 have any other questions
745	Q2:	I don't have any other questions.
746		Me either. Uh, you have anything else you want to add?
747	Q:	Me entitle. On, you have any many
748	A .	No.
749	A:	
750	0.	Okay. It's 2205 hours. 2205 hours. End of interview with Officer Kastmiler.
751	Q:	Oray. 10 5 2200 110 1121
752 753		
753	This transcript	has been reviewed with the audio recording submitted and it is an accurate
754 755	transcription.	1140 000M 20 120 110 110 110 110 110 110 110 110
755 756	Signed	
/30	Signed	

1		
2		
3		
4		
5		y)
6		
7		INTERVIEW WITH OFC. (TIMOTHY) GARDNER
8		Q=Sgt. Hong
9		Q1=Det. Johnson
10		Q2=(Harry) Stern
11		A=Ofc. (Timothy) Gardner
12		
13		
	0	Ol III D.1
14	Q:	Okay. It's February 13, uh, Wednesday 1814 hours. This is interview with
15		Officer (Tim) Gardner. My name is Sergeant Hong, H-O-N-G.
16		
17	Q1:	Detective Johnson, J-O-H-N-S-O-N, badge 26.
18	Q1	Dotto to this only of the state
	00	1) (II) Chang C T E D N I'm have representing Officer Gordner
19	Q2:	I'm (Harry) Stern, S-T-E-R-N. I'm here representing Officer Gardner.
20		
21	A:	(Timothy) Gardner, last name G-A-R-D-N-E-R.
22		
23	Q:	All right. Uh, Officer Gardner, you signed your waiver?
	Q.	All fight. On, Officer Gardner, you signed your warren.
24		**
25	A:	Yes.
26		
27	Q:	All right. Okay. A- Officer Gardner, could you state your rank and badge
28	ζ.	number?
29		rn 4 1 00 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
30	A:	Uh, patrol officer, badge number 121.
31		
32	Q:	What was your hire date with Berkeley Police Department?
33		•
34	۸.	Hmm. Uh, my date of seniority is, uh, let's see, January 1, 02.
	A:	fillill. Oil, thy date of semoney is, dif, for 3 see, surdaily 1, 02.
35		
36	Q:	Got it. Do you have any prior law enforcement experience outside of Berkeley
37		Police Department?
38		
	۸.	No
39	A:	No.
40		
41	Q:	Which patrol operations team were you working yesterday's shift?
42	-	
43	A:	Team three.
	A 3.	A WHALL VALLEY
44		

90 91	Q:	All right. Did you work any overtime after y- um, the last shift you worked prior to the shift of yesterday's incident?
92 93	A:	No.
94 95	Q:	Have you taken any medication, prescription or otherwise?
96 97	A:	No.
98 99	Q:	Have you consumed any alcohol in the past 24 hours?
100 101	A:	Mm, yes. I had a couple beers when I got home last night.
102 103 104	Q:	Okay.
104 105 106	Q2:	That was post this incident?
107 108	A:	Yes.
109 110	Q1:	It was after (unintelligible).
111 112	Q2:	Okay.
113 114	Q:	Uh, do you have any medical conditions?
115 116	A:	Uh, no.
117 118	Q:	When was the last time you slept, how long, and between what hours let's say prior to yesterday's shift?
119 120 121	A:	Prior to yesterday's shift?
121 122 123	Q:	Yeah.
124 125	A:	So
126 127	Q:	How much rest did you get (unintelligible).
128 129		the night before?
130 131	Q:	Correct.
132 133	A:	Uh, I think I had about eight to nine hours. Yeah, I believe that.
134	Q:	Okay. Uh, did you sustain any injuries during yesterday's incident?

180		
181	0	Were you a single officer car or a paired officer car?
	Q:	were you a snigle officer car of a paried officer car:
182	1	
183	A:	Single.
184		
185	Q:	Now you've completed your supplemental police report regarding this
186		incident, correct?
187		
188	A:	I have.
189	1 1	i nave.
	Q1363	A11
190	Q:	All right. And could you read your completed report for us?
191		
192	A:	Summary. Sorry. On the listed date just after time of report I heard a broadcast
193		of additional units needed for a call at 2116 (Austin) Way number 514. It was
194		apparent from the broadcast that BPD officers were involved in a struggle
195		with a violent subject. I responded code three and when I reached the
196		apartment I saw several BPD officers struggling to take an extremely large
197		and violently resisting partially naked person into custody. The person
198		appeared to be approximately 400 pounds and it took several officers'
199		combined efforts to control his hands. Along with several officers who arrived
200		with me we m- finally managed to place him into handcuffs and called for
201		BFD to respond to assist with transporting him. After we had successfully
202		placed him in handcuffs it appeared he had suddenly stopped breathing. I
203		assisted with immediately uncuffing him while other officers requested
204		emergency medical assistance and began chest compressions. BFD arrived
205		shortly thereafter and began efforts to revive the person.
206		shortly thereafter and began enous to revive the poison.
		Ol C I was (and at all a delay and and all adapt Olean Co subservious
207	Q:	Okay. Can I see (unintelligible) real quick? All right. Okay. So when you
208		heard the, uh, radio broadcast of, uh, additional – request for additional units
209		do you recall who made that broadcast and what the words were if you can
210		recollect?
211		
212	A:	Um, it was A4.
213		
214	Q:	Mm-hm.
215	Q •	With this.
	Acar	Ille Officer (Clan Brown) and it was a partially broken transmission and what
216	A:	Uh, Officer (Glen Brown) and it was a partially broken transmission and what
217		I heard was send us more officers or something to that effect.
218		
219	Q:	Okay. And you res- responded in what manner, uh
220		
221	A:	Uh
222		
223	Q:	what code?
	∠ ∗°	what code:
224		

270 271	Q:	Okay. Uh, and so you made it up to the fifth floor
272 273	A:	Yeah.
274 275	Q:	and, uh, when you reached the apartment was the door open or closed?
276 277	A:	It was open.
278 279 280 281	Q:	Open. Uh, could you just describe, uh, the general description of the area in which this area – in which this incident occurred? General description of the area that this, uh, incident occurred.
282 283	A:	You mean in the apartment?
284 285 286	Q:	Yeah. Or the landing, apartment, and what you observed before we talk about what you saw in terms of the struggle, et cetera.
287 288 289	A:	Um, well, there's s- you know, the elevator opens up and there's – it seems like an interior courtyard
290 291	Q:	Okay.
292 293 294 295	A:	and I had to walk around the, um, I guess there was a railing maybe or something like that. And so I walked around kind of an L to get to the open door.
296 297	Q:	Mm-hm.
298 299 300 301	A:	And, uh, so I guess the – the doors kind of open out into the courtyard but they don't face the courtyard necessarily. I think they were just like, kind of walls that divide them.
302 303 304	Q:	Okay. All right. And, um, so when you got there you s- uh, you saw the door was already open?
305 306	A:	Yes.
307 308	Q:	Okay. And you looked in?
309 310	A;	Yes.
311 312 313	Q:	Okay. Co- uh – uh, without talking about the people can you talk about what the rooms looked like to the best of your recollection?

359		
360	A:	Mm-hm.
361		
362	Q:	frontal shoulder area?
363		
364	A:	Yeah.
365	11.	1 April
	0.	Okay. And were they, uh - which way was - again, so you're saying based on
366	Q:	what you described that Mr., um – uh, (Moore) s- was on his belly or on his
367		
368		back?
369		
370	A:	He wasn't on his back.
371		
372	Q:	Okay.
373		
374	A:	But I don't know if he was on his stomach or partially on his side 'cause a- all
375		I remember is focusing on where were his hands for the most part
376		5
377	Q:	Okay.
	Q.	Okuy.
378	Α.	because I – he was not yet handcuffed.
379	A:	because 1 – He was not yet handcurred.
380		
381	Q:	So when you entered
382		
383	A:	Mm.
384		
385	Q:	uh, it was only Officer (Tu), (Smith), and (Brown). Only those three?
386		
387	A:	Right.
388	11.	
389	Q:	Okay. And you entered obviously you said - you said with Kastmiler and
	Q.	(Mathis)
390		(Maths)
391		$\lambda I = 1$
392	A:	Mm-hm.
393		1 1 00 10
394	Q:	and he was not handcuffed?
395		
396	A:	N- no.
397		
398	Q:	Okay. So, uh, seeing what you see and the struggle that you see what did you
399	٧.	- what did you do in terms of (unintelligible)?
400		···
401	A:	Well I went to grab one of his hands or to help because I saw that there were
	A_{\cdot}	handcuffs on at least one wrist and they seemed to be – there seemed to be at
402		
403		least two sets of handcuffs linked together.

4.40		
449	0.	Um, do you remember how Mr. (Moore) was clothed?
450 451	Q:	om, do you remember now that (tracers) was
452	A:	He was partially naked or his, uh – like, there seemed to be something around
453	71.	his legs l- and that was it – his lower extremities.
454		
455	Q:	Do you remember if any of- other officers took - try to take control of Mr.,
456	ζ.	uh, (Moore)'s legs?
457		
458	A:	Yes.
459		
460	Q:	What do you recall?
461		and the state of t
462	A:	Um, well, I recall that he was still, uh, struggling. It – it seemed like he was
463		trying to still get up.
464		
465	Q:	Mm-hm.
466		17.1. 1. (M. 4) 'a) had ahald af his lawer least his ankles. And
467	A:	Um, and I think (Mathis) had ahold of his lower legs – his ankles. And
468		someone, uh, called for the wrap.
469		Mar Inn
470	Q:	Mm-hm.
471		And it was apparent that he would not fit in the wrap and so we decided that
472	A:	we would, uh, put the hobble restraint from the wrap on his ankles.
473		We would, this, put the hoodie restraint from the way and
474 475	0.	Okay, there's a hobble restraint
476	Q:	Ordy, there is a needle resident.
477	A:	So I helped with that.
478	11.	So x mospour visite in
479	Q:	the strap part for
480	ζ.	
481	A:	Yeah, the strap.
482		
483	Q:	So you assisted in the
484		
485	A:	Yes.
486		
487	Q:	wrapping of the ankles?
488		
489	A:	Yeah.
490		Ol Go it was von and (Mathia)?
491	Q:	Okay. So it was you and (Mathis)?
492		

538		I don't rem- but I – I remember that there was some instruction for him to,
539	A:	you know – you just – stop resisting or put his hands – just put his hands
540 541		behind his back, something like that. I don't remember exactly though.
542		
543	Q:	Okay. Now Mr. (Moore), uh, do you remember him v- saying anything,
544		yelling – what was his – what was he verbalizing during this – the struggle?
545		I remember him - him yelling loudly, uh, but I don't remember h- h- or him
546	A:	articulating any words that I could make out.
547 548		
549	Q:	Okay. Um, do you recall if Mr. (Moore) was complaining of pain of any way
550	⋖.	or complaining that he was having difficulty breathing of any way during the
551		struggle?
552		
553	A:	I didn't hear any of that. No.
554 555	0:	Okay. Um - uh, y- would you characterize Officer (Mathis), Officer (Tu) as
556	Q:	big – big officers? Um, and Officer (Smith) as well?
557		
558	A:	Yeah.
559		A decided and weight?
560	Q:	And you are - what's your stature? Your height and weight?
561 562	A:	S- uh, 6 feet, 195.
563	Α.	A CONTRACTOR OF THE CONTRACTOR
564	Q:	195. Okay. And, uh, based on y- and you consider yourself in shape?
565		
566	A:	Reasonably. Yeah.
567	0.	And, uh, your felt it – do you feel that, um – uh, y- y- during the struggle that
568 569	Q:	you yourself was having a difficult time controlling
570		
571	A:	Oh, yeah. I mean, when I was holding onto his feet it was $-I - it - I - it$ was
572		all I could do to hold his – his ankles down.
573		
574	Q:	Okay.
575 576	A:	Uh
577	71.	
578	Q:	Uh, I know you said you assisted in handcuffing
579	-	
580	A:	Mm-hm.
581	0.	and then thereafter you assisted in the, uh, ankle restraint.
582	Q:	unite their meredians of a second

628	A:	I don't remember that.
629		a de la contraction de la cont
630	Q:	Uh, was he sweating profusely (unintelligible) anything like that?
631		the the violent
632	A:	Um, no. It was just more from – from my point of view his – the – the violent
633		behavior and – and the I guess how strong he was in – in the – in terms of his
634		resistance.
635		to the latest state whereast briefly. Before going
636	Q:	Okay. Um, before going – let me back track just, uh, real briefly. Before going
637		to the call for assistance on the radio did you even know what type of call that
638		these officers were at? (Brown) and, uh, (Tu).
639		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
640	A:	I remember hearing the call originally of some kind of disturbance, some kind
641		of, uh, fight between roommates and I heard three units – I believe three units
642		got dispatched to it. So I just kind of absently heard it and – and then I didn't
643		hear anything more until all of a sudden I heard (Elaine Brown)'s re-voice on
644		the radio asking for help or cover – additional units.
645		of the later inst do this real quick then. Have you ever had any
646	Q:	Okay. Uh – uh, let me just do this real quick then. Have you ever had any
647		prior contact with Mr. (Moore)?
548		
649	A:	Not that I am aware of.
650		Okay. Do you have any prior knowledge of Mr. (Moore), who he was and
651	Q:	Okay. Do you have any prior knowledge of wit. (woole), who he was also
652		what he was all about?
653		Um, no. I – I kinda feel like there was a call last week, uh, of a 5150 at some
654	A:	point and I thought maybe it was the same person when the call went out but I
655		point and I thought maybe it was the same person when the
656		have no idea if it was or not.
657	•	Okay. Um, all right. So, uh, you said that you were - you - you and the
658	Q:	other officers were able to successfully handcuff him. And were you and
659		Officer (Mathis) or any other officer together able to suc- successfully restrain
660		
661		his ankles?
662		Vac wo word
663	A:	Yes, we were.
664	0	Okay. After his ankles were restrained and he's now in handcuffs did the
665	Q:	
666		struggle continue?
667	A	Um, yeah. We e- he was still trying to lift up his legs, um, and move. Um, I
668	A:	don't know how long that went on
669		doll twilow how long that work office
670	0.	Okay.
671	Q:	Onay.
672		e e

718		
719	Q:	Okay. All right. Um, and so there was a discussion as you said as to the wrap
720		or BFD and when you said, uh, was it – was it d- was it determined based on
721		discussion that you were gonna call BFD?
722		
723	A:	Yeah. I think it was immediate.
724		
725	Q:	Okay.
726		
727	A:	It was – it was he's too big for the wrap. We better call BFD and, uh, I think
728		th- Sergeant, uh, (Phillips) said something like, "Yeah, they'll do the four
729		point restraint," or something like that in a gurney.
730		
731	Q:	Got it. So, um
732		and the second s
733	A:	I don't know if she used the word four point but it was some kind of
734		restraint
735		
736	Q:	Yeah.
737		
738	A:	term that she used.
739		
740	Q:	So you – your decision was that you guys gonna get the BFD to bring a
741		gurney up so you guys can strap him into a, um – in a medical gurney and to
742		take him down?
743		
744	A:	Right.
745		
746	Q:	Question is is do you know at – did you know at the time while during – while
747		the struggle was happening why the officers, uh, wanted him restrained in
748		handcuffs? What was the intent?
749		
750	A:	No. I did not know.
751		
752	Q:	Okay. And after the - everything calmed down and they were told that we're
753		gonna get the gurney for, uh, Mr. (Moore) to take him out of the room do you
754		know why he was gonna be taken out of the room?
755		
756	A:	No.
757		
758	Q:	Okay. Um, so, uh, you're – you're waiting for the gurney, correct?
759	-	
760	A:	Yeah.
761		
762	Q:	All right. And who made the request for the gurney? Do you recall?

808		
809	A:	And I immediately went over and attempted or did unhandcuff him and, um,
810		you know, pu- a- it was kind of all one motion where he was gonna be rolled
811		all the way onto his back therefore I wouldn't be able to unhandcuff him. So
812		at that point I was unhandcuffing him as – as I don't remember who it was
813		rolled him to his back and then immediately started chest compressions.
		forced firm to his back and their immediately started effect compressions.
814	0	G
815	Q:	So you a- unhandcuffed Mr. (Moore)?
816		
817	A:	Yes.
818		
819	Q:	Okay.
820		
821	Q1:	Successfully?
822		
823	Q:	And
824	Q *	/ illu
	Α	Voc
825	A:	Yes.
826		
827	Q:	Okay. And he was rolled back onto his back and where they were doing – and
828		then the officers started doing CPR?
829		
830	A:	Yes.
831		
832	Q:	Uh, do you remember who t- which officer is doing the chest compression?
833		
834	A:	It was Officer (Tu).
835		
836	Q:	Okay. Do you remember who was doing the airway portion of the – the air?
837	V .	Okay. Do you tomomoof who was doing the all way portion of the time all.
838	Λ.	Um, you mean making sure that the airway was clear?
	A:	On, you mean making sure that the an way was clear:
839		
840	Q:	Yeah. Or if (unintelligible).
841		
842	A:	I
843		
844	Q:	normally you have somebody at the mouth
845		
846	A:	Right.
847		C
848	Q:	and somebody at the chest.
849	≺ #	aid boliloody at the onobi
	Λ *	I don't remember who did that.
850	A:	I don't remember who did that.
851		

897	Q:	And w- every time you went back in it was just simply the officers
898		
899	A:	Just
900		
901	Q:	continuing CPR?
902		
903	A:	Yeah. And
904		
905	Q:	(Unintelligible).
906		
907	A:	a- at one point I asked Officer (Tu) if he needed, uh - needed, um, you
908	11.	know, give him a break or
909		Miow, give min a orean or
910	0:	Yeah.
	Q:	i can.
911	Α.,	to take over if he was getting tired and, uh, but he seemed to be doing a
912	A:	
913		pretty good job. And he said no, he was fine.
914		
915	Q:	Okay.
916		
917	A:	And, um
918		
919	Q:	Okay. And eventually paramedics arrived?
920		
921	-A:	Yeah. And so I think it might have been my second time out the elevator – I
922		head the - the t- you know, elevator coming up or something and so I saw it
923		open. I said y- in here guys. And let 'em into the room.
924		
925	Q:	And, um, BFD came and, uh, kept working on Mr. (Moore) and they
926		transported him in the ambulance to your knowledge to (unintelligible)
927		hospital? So when – after they trans- after they took Mr. (Moore) out of the
928		room how – did you stay or did you – did you leave or what – what happened
929		thereafter?
930		
931	A:	Well, I left and went downstairs.
932	11.	77 - 77
933	Q:	When – when BFD arrived?
934	ζ.	Whom whom Bi B dail to a
935	A:	Yeah.
936	A.	i can.
	0.	When the fire
937	Q:	when the me
938	۸.	Vooh
939	A:	Yeah.
940	0.	and manageding agricuad?
941	Q:	and paramedics arrived?

986 987	Q1:	Did you interact with any subjects that weren't police officers or Mr. (Moore) during the time when you came there in the apartment (unintelligible)?
988 989 990	A:	I, um – when I first exited the elevator I didn't know exactly where the room was
991	0.1	M. Luc
992	Q1:	Mm-hm.
993	Α.	and there was a person and I don't know who it was but they were like,
994	A:	looking and it looked like they knew what was going on so I said, "Where is
995		it?"
996 997		it:
997	Q1:	Mm-hm.
999	Q1.	IVIIII IIIII.
1000	A:	"Where's the room," maybe or something like that. And he just pointed.
1000	Λ .	Whole is the rectal, and see at a second by
1001	Q1:	Okay.
1002	Q1.	Olay.
1003	A:	So (unintelligible).
1005	11.	50 (dilinio 11).
006	Q1:	Did you know that person from prior contact or anything?
1007	Q1.	
1008	A:	No. No.
1009		
1010	Q1:	Okay. And did you see that person later or
1011	- 17	
1012	A:	N- not to my knowledge.
1013		
1014	Q1:	Okay.
1015		
1016	Q:	Okay (unintelligible). Okay. Uh, actually I got some questions. Last ones from
1017		me. Of all the officers on scene that you re- can call - you can recall
1018		
1019	A:	Mm-hm. Mm-hm.
1020		
1021	Q:	okay, at any time did any officer or you strike Mr. (Moore) with a open
1022		hand or closed fist?
1023		
1024	A:	No.
1025		
1026	Q:	Did you witness any officer or you use – use the, uh, baton?
1027		
028	A:	No one used a baton that I saw.
1029		
1030	Q:	Had you or any other officer, uh, used, uh, OC spray?

INTERVIEW WITH OFC. (TIMOTHY) GARDNER Interviewer: Sgt. Hong, Det. Johnson & Harry Stern 02-13-13/6:14 pm Case # 2013-08510 Page 25

1076	A:	Um, I would just say that - that we did our best and that I saw every officer	
1077		behave very professionally.	
1078			
1079	Q:	Okay. Good. (Unintelligible). All right. It is, uh, 1847 hours. This concludes	7.5
1080		the interview, uh, Officer Gardner, G-A-R-D-N-E-R.	
1081			
1082			
1083	This transcript ha	as been reviewed with the audio recording submitted and it is an accurate	
1084	transcription.		
1085	Signed		÷

1		
1 2		
3		
4		
5 6		
7		INTERVIEW WITH SGT. (AMBER) PHILLIPS
8		Q=Sgt. Hong Q1=Ofc. Jesse Grant
9		A=Sgt. (Amber) Phillips
10 11		A1=(Harry) Stern
12		
13 14 15 16 17 18 19 20 21 22 23 24 25 26	Q:	All right February 14th, 2020 hours. Interview with Sergeant (Amber) Phillips. Uh, I am Sergeant Hong, H-O-N-G.
	Q1:	Officer Jesse Grant, J-E-S-S-E, G-R-A-N-T.
	A:	Sergeant (Amber) Phillips, last name P-H-I-L-L-I-P-S.
	A1:	I'm (Harry) Stern, S-T-E-R-N.
	Q:	Uh, Sergeant Phillips, uh, you are - you're, uh, you're rank of sergeant. Your badge number please?
	A:	S-17.
27 28	Q:	Okay and what was your hire date with Berkeley Police?
29 30	A:	July I think s- 6 or something 2004. July of 2004.
31 32	Q:	Okay do you have any prior law enforcement experience?
33 34 35 36 37 38 39 40 41	A:	No.
	Q:	Which patrol operations team do you work?
	A:	Team four.
	Q:	What are your normal days worked and normal hours worked?
42 43	A:	Monday through Thursday 2030 to 0630 hours.

89 90	Q:	Okay. Um, had you taken any medication during this period? Prescription or otherwise.
91 92	A:	Uh, prescription.
93 94 95	Q:	Uh, um, can you say what
96 97	A1:	And so I would
98 99	Q:	uh
100 101 102	A1:	uh, the only thing I would ask her, uh, or ask that she'd answer the question only if it's, uh, a prescription medication that would affect her ability to perceive, react, or affect her memory. So is it any of those categories?
103 104	A:	No it was not.
105 106	A1:	Okay other than that I instruct her not to answer the question.
107 108 109 110	Q:	Got it, accepted okay. Uh, ha- have you consumed any alcohol in the past 24 hours?
110 111 112	A:	No.
112 113 114	Q:	Do you have any medical conditions?
115 116	A:	No.
117 118	Q:	Uh, prior to Tuesday's shift, uh, or just before Tuesday's shift, uh, when was the last time you slept and how long and between what hours?
119 120 121 122	A:	It would've been Tuesday morning from about - I'd say maybe 8:00 or 8:30 am - it's probably about 8:30 am to 2:00 or e- 1400. It's pretty sporadic. I'd say it's pro- maybe five hours I get during the day.
123 124 125 126 127	Q:	Okay - okay. Now when I speak of the incident we're talkin' about the incident, uh, that occurred on Tuesday the 12th, uh, that occurred at, uh, 2116 Allston Way in Apartment 514 okay. Uh, did you sustain any injuries during this incident?
128 129 130	A:	No.
131 132	Q:	Excuse me. Do you wear corrective eye glasses or contact lenses?
133	A:	No.

Yeah. On February 13th, 2013 at about 0030 hours I responded to 2216 Allston Way, Apartment 514 because officers were requesting code three cover. I arrived on scene with Sergeant cardo- (Cardoza) about 0033 hours and we had both entered the apart e- apartment four - 514 together. When I entered the apartment I saw Officer (To), Officer (Brown) (unintelligible) Officer (To) badge 38, Officer (Brown) number 16, Officer (Gardner) 121 and Officer (Mathis) number 80 attempting to restrain an individual on a mattress on the floor of the living room area. The person they were restraining who was later identified as (Moore) was lying on his stomach with his hands cuffed behind his back. (Moore) was violently kicking at officers. Particularly Offic- Officer (Mathis) who was attempting to ga- gain control of his feet. Sergeant (Cardoza) deployed the WRAP Restraint Device and I provided the ankle strap to Officer (Mathis) who secured (Moore)'s ankles. Officers did not attempt to place the leg and chest pieces of the WRAP Restraint Device on (Moore) due to his large size, approximately 350 plus pounds. At about 0034 hours I contacted BPD dispatch via radio and requested that BFD respond to our location with a gurney. I requested the gurney because it was apparent that officers would be unable to move or lift (Moore) do hi- due to his large size especially since his apartment was on the fifth floor. Once (Moore) calmed down officers rolled him on his left side and Officer (Brown) confirmed he was breathing and had a pulse. Although although (Moore) was breathing it appeared he was having difficulty. I advised BPD dispatch that we would also need BFD paramedics because (Brown) was having difficulty breathing. At around 0041 hours Officer (Brown) noticed that (Moore) was no longer breathing and did not have a pulse. At this time I advised BPD dispatch that (Moore) was not breathing and that officers would be starting CPR. Officers immediately removed the handcuffs from (Moore) and placed him on his back. Officer (To) gave (Moore) chest compressions until BFD arrived on scene and took over. Once (Moore) was transported to Alta Bates Hospital by BFD I assisted Sergeant (Cardoza) in managing the scene and did the following. Uh, Sergeant car-(Cardoza) and I directed Officer (To) to follow BFD -- excuse me -- to Alta Bates Hospital to get an update on (Moore)'s condition. I then directed, uh, Officer (Macintosh) to conduct a canvas of the fifth floor or 2116 Allston Way to determine if any neighbors had contact with (Moore) prior to our arrival. I directed Officer (Castenmiller) to take a written statement from (Sterling). I contacted Officer (Smith) via phone while he was in the BPD jail and directed him to take a written statement from (Haze) and at about 0204 hours Sergeant (Cardoza) took over the scene as being supervisor and I was released from the scene.

221 Q: 222

220

Okay thank you. Okay so, uh, Sergeant Phillips you heard a radio broadcast, uh, as you indicate in your police report requesting code three cover. Could

268	A:	Mm-hm.
269270271	Q:	Okay. When you arrived at Apartment 514 before, uh, looking inside, uh, what was the general description of your surroundings?
272 273 274 275 276 277 278 279 280 281 282 283 284 285	A:	So when you go - when you go in, uh, when I ca- when we came in off the elevator I immediately saw a black male standing on the corner like a couple doors down from - from the apartment. I figured he was either somebody that knew or he was a neighbor that was just waiting. I just - I just happened to notice 'cause he seemed to be the only one really standing by just not moving. Uh, and it - it - it's a - it's like a - shaped like square on the inside but it's got a I - the lob- I don't know what the lobby or whatever you call it in the middle. So it's five fl- five levels, um, almost like tiers of apartment - apartments that are all on in a circular or kind of surrounding. Um, I didn't see - I didn't notice really anybody else. I didn't see any other officers and so I knew - I could see that the door was open once I came out of the elevator that the front door was, uh, w- that was the only door that looked open to me. So I assumed that was the apartment.
286 287	Q:	Okay. So there was no other officers on the landing (unintelligible)
288 289	A:	Not that I recall no.
290 291 292	Q:	Okay. So you - you see an open door to the apartment and when you first look in what is your first observation you see?
293 294 295 296	A:	Right when you first walk in, I look in and I can see immediately, uh, I see - now I recall it's, uh, I believe five officers and there's a, uh, I didn't know at the time male or female but a, uh, a - a black person, um, that was laying on their stomach in handcuffs - two sets of handcuffs that I recar- uh, recall and,
297 298 299 300 301 302 303 304 305		uh, there were officers holding like his extremities. Like arms, tegs, um, and the person was kicking and I remember that (Mathis) - Officer (Mathis) was the one by the feet and the person was kicking the feet and he, you know, um, and I remember someone saying get a spit mask, uh, with a ra- we were athey were askin' about the WRAP and we were like we have the WRAP. Uh, Sergeant (Cardoza) had - said he had grabbed the WRAP out of my car so when we - we arrived we had it with us and we started to take the WRAP out of the, uh, the bag.
306 307 308	Q:	Okay. And (unintelligible), uh, real briefly so when you - upon entering you saw a - a person lying on his stomach?
309 310	A:	Yeah.
311 312		Was he on the ground or any - or was - where - where was he lying o

		7
358 359	Q:	correct? Okay. And you said Officer (Mathis) - what was Officer (Mathis) doin' again?
360 361 362 363 364 365	A:	He was trying to hold down the legs and I remember the, uh, the subject was kicking and he yelled, "Give me the ankle" - we were takin' the WRAP out and he says, "Give me the a- we need to - we need to secure the ankles." And so I handed him the ankle thing and he wrapped the - his ankles and that obviously stopped the kicking.
366 367 368 369	Q:	Oh good. Okay so the a- uh, the thing you're referring to is a strap that is part of the WRAP Device correct?
370	A:	Right correct.
371 372 373	Q:	And - and he - and Officer (Mathis) used that to restrain the - what part of the legs of the - the subject?
374 375 376	A:	Just the - both ankles, um, had the - I believe the ankles were crossed and he used the - the device to - used the Velcro and - and - and restrain him.
377 378 379	Q:	Before we go further can you best of your recollection describe this person? Meaning height, weight, stature etcetera.
380 381 382 383 384 385 386 387 388 390 391 392 393 394 395 396 397	A:	From what I could tell and I - again I couldn't tell if it was a male or female because I could te- I could see that there appeared to be long braids. Um, and I remember asking Officer (Brown) is it a male or a female? The body type, um, it - it was - I could tell it was a b- a person that was African American, black. Um, and the person looked - they probably weighed I would say somewhere between 350 - 380 pounds. Um, and from the body type and from the back - and the person was nude. Um, I - there might've been a piece of clothing close to the ankle area, um, but for the most part the whole back area and the - and the - and the butt area was exposed and I could see that there - the - that he was nude. Um, and I asked Officer (Brown) i- is - is it male or female. I know that wasn't - for me it was in my mind. It's just - I don't know who we're dealing with and - or what we're dealing with and if it is female there's other, you know, factors that could be at play. So I asked and then she told me it's a male but it was a, uh, pre-op transgender or transsexual or somethin' like that and I said okay. And that's when I - I recognized who - I knew who it was. I knew exactly who it was.
398 399 400	Q:	Okay. Now, uh, while you're observing the officers tryin' to keep, uh, Mr. (Moore) - we're gonna refer to
401 402	A:	Yeah.

448	A:	No not - not at any time when I was there did he ever - like I said say
449		anything ask for help, say he couldn't breath, say that anybody was on his
450		back or anything like that. He nev- that never came out.
451		•
	\bigcirc	Okay.
452	Q:	
453		And, you know, we have that happen all the time and nothing - he never said
454	A:	
455		any of that.
456		Uh, and then he, uh, slowly started calming down now you said and once he
457	Q:	Uh, and then he, un, slowly started canning down now you said the
458		did - he eventually did calm down?
459		
460	A:	Mm-hm.
461		1 1 (1)and
462	Q:	Okay. And once, uh, he's now ca- um, calmed down, uh, w- what happened
463	Q.	now as - as he's now calm?
464	۸.	Once he calms down i- it's - I - at some point I think Officer (Castenmiller)
465	A:	ooms in other officers - it was like - it was - it was obvious that no - we no
466		longer needed five officers I think. I don't know how the decision was made
467		but I know Officer (To) I re- I - I saw that he was sweating and appeared to
468		be, you know, kind of out of breath and I - he asked - he said, "Do you guys
469		have it? Is it okay if, you know, can I just take a break for a second?" And I
470		
471		said go outside.
472		
473	Q:	Mm-hm.
474		to the factor below
475	A:	Um, take a breath. I couldn't tell - I, you know, was worried about him being
476	1.21	initial or you know just - he seemed exhausted. So I sent nim outside. Oil,
477		and I - 'cause I knew at that point I believe Officer (Casterminer) was there
		but he ween't the up Mr Miller w- Moore, excuse me, was no longer
478		fighting. So it was just kind of - officers were sitting there with the hands on
479		him just in case. I'm but there really wasn't any, uh, anything, you know,
480		the arrange to any resisting going on And then at some point of Officer
481		(Gardner) and (Mathis) I believe leave, um, and I think Officer - Officer (To) I
482		know for sure comes back and I remember that's when, um, (Gwen) or Officer
483		(Brown) says, you know, looks over and like is he breathing? And I look and
484		(Brown) says, you know, looks over and like is no oreating. The he was laving on his
485		I said is he breathing s- I mean is his chest moving? Um, he was laying on his
486		left side at this point and the officers again were just waiting - we were waitin'
487		for BFD the whole time. Uh
488		
489	Q:	Uh, when he was calmed down he was just laying there and you guys were
490	ζ.	just
491		
491	A.	On his left s
492	A_{i}	OH HAD AVAT VIII

		16	
			there. Um, so I also made the assumption that no matter what BFD was come
53			some with medical So I didn't think that that question,
53			leave what I didn't know that they were gonna ask me mai question.
54			assumed they were gonna come code three like I requested, um, and that
54			would include, uh, an ambulance and an engine, um
54	12		would include, un, an amountaince and an engine,
54	43		Okay. So wa- but when you, uh, who first noticed him - that Mr. (Moore)
54	44	Q:	Okay. So wa- but when you, ull, who hist noticed him that the last the last had been your than the last the last had been your than the last h
54	45		stopped breathing do you recall?
54	46		
	47	A:	I think it was Officer (Brown).
	48		
	49	Q:	Okay.
	50	ζ.	·
	51	A:	Or w- when he stopped breathing?
	52	1 1.	
	53	Q:	When he stopped breathing.
		Q.	
	54	۸.	Yeah it was - it was - it had happened really quickly from the time he was
	55	A:	1 all in the not breathing. I - she might've said it and I know that at some
	556		point I said I don't think he's breathing. So somewhere in between 30 seconds
	557		to a minute, uh, both of us noticed that
	558		to a minute, un, both of as notice
	559	_	
	560	Q:	O
	561		1
-	562	A:	and
4	563		
4	564	Q:	okay.
	565		ui bis nome and uh you know we tried to roll
:	566	A:	she started, you know, yelling his name and, uh, you know, we tried to roll
	567		him o- I was like take off the handcuffs and they rolled him on his back.
	568		d that he man't breathing was
	569	Q:	Okay so - and then when you - when you noticed that he wasn't breathing was
	570		it you that made that ra- radio broadcast for emergency medical because - and
	571		you verbalize on the radio that no longer was this person breathing?
	572		
	573	A:	I said, uh, subject is no longer - is - subject is not breathing. I don't know if I -
	574	21.	I don't think I said he didn't have a pulse. I think I said s- subject is not
			breathing. We're starting CPR.
	575		Oldania, S. C.
	576	0.	Got it okay.
	577	Q:	Got it okay.
	578		T Th
	579		Uh
	580		And - and you order officers to remove the handcuffs?
	581		And - and you order officers to remove the
	582		

628 629 630 631 632		I went back - ran back and told BFD - BFD that. And then I helped them, you know, they took everything basically almost - all the mattresses and everything out of the living room, put that in the bathroom area 'cause they didn't have enough space to work.
633 634	Q:	Okay. Where d- where were those mattresses in relation
635 636	A:	Th
637 638	Q:	to the apartment how it's set up?
639 640 641 642 643 644 645 646	A:	so when you walk directly in, there's a bathroom on the left. And to the left there's a little hall closet to the left as well, next to the bathroom. And you walk - when you walk straight, um, right down that hallway the - the mattresses were right on the floor and it would be a c- a - it was across from the kitchen area, um, and they were in the corner. And then there was like a little bedroom behind I guess that living area. Um, I didn't notice if there's - it was open but I don't know if there's a door or not. But it was just - they were laying on the - the mattresses were laying on the corner, uh, on the floor in the corner.
648 649 650	Q:	Okay. And, um, uh, eventually the paramedics leave with Mr. (Moore)
651	A:	Mm-hm.
652 653 654	Q:	as they're working wi- on him? Okay. Once the paramedics are leaving was there an officer assigned to, uh, e- to accompany the paramedics?
655 656 657 658 659 660 661	A:	N- uh, not right away and then, uh, Sergeant (Cardoza) was - spoke to Officer (Brown) and Officer (To) and was like, you know, tryin' to determine who was handling the case and Officer (Brown) said it was her case. So then he told Officer (To) your - you go - somebody needed to go with the ambulance. So Officer (To) was sent with the ambulance and Officer (Brown) I believe was sent 1019. Came back to the station to write a report.
662 663 664 665	Q:	Okay. So I'll ask this at this point, who - who has been - who was designated - upon your e- your arrival and officer - or Sergeant (Cardoza)'s arrival together, uh, who assumed scene supervising, uh, uh, role?
666 667 668 669	A:	That wasn't assumed until after BFD had taken - tra- transported, uh, Mr. (Moore).
670 671	Q:	Mm-hm.

716 717	Q:	Okay. Do you recall when the notification of, uh, time of death was for Mr. (Moore) at the hospital? Do you recall who made the notification and how'd
718		you find out?
719 720 721 722 723 724	A:	Officer (To) called me while I was still outside of the apartment building, um, and said that the doctor at Alta Bates and I don't know the doctor's name had called the time of death at 0134 hours. And I asked him if he was on his way back. I said are you, you know, to come back and he said he was on his way.
725	_	01 277 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
726 727	Q:	Okay. Was a technician called at any point (unintelligible)?
728	A:	Yeah Sergeant (Cardoza) had called a ID tech, uh, I think right after BFD had
729		left sometime and - some - some - at some point he had called the ID tech. I
730		didn't - I didn't do that but yeah the ID tech did show up while we were still
731		there.
732	_	of D 11:5 + 1 + 4t- the heavital at all?
733	Q:	Okay. Do you recall if a tech was sent to the hospital at all?
734		N. I. I. W. Art. and handed
735	A:	No I don't - not to my knowledge.
736	0.	Okay. Uh, couple questions I - I neglected to ask is when - when you received
737	Q:	a code three of, uh, assistance, uh, request on the radio and you were going to
738 739		2116 Allston, did you know what the call was all about?
740		2110 Anston, and you know what the out was an account
741	A:	I - I didn't immediately. Um, I - I didn't - I - I heard the 415 come out but I
742	71.	didn't put it together right away until I l- I looked at the call as I was going
743		and it just said, uh, 415, um, and 5150. So in my mind as I was going I was
744		assuming they were s- they were struggling with a 5150. Um, didn't have any
745		idea of the person or the w- you know, the weight or sta- any of that - none of
746		that was - came out or was relevant because I got there pretty quick. I'd say
747		less than a minute. Um, but I - I as- I saw that it was a call and I saw the
748		initial comments of the call was that it was a 5150. I think off his medication
749		or something like that.
750		
751	Q:	Okay. And when you arrived and, uh, the - Mr. (Moore) was ha- in handcuffs,
752		did you know at that point why Mr. (Moore) was in handcuffs?
753		
754	A:	No I didn't. Um, I had no idea ye- I didn't know if he was under arrest or if it
755		was a 5150 t- I had no idea at that point. I didn't find out until after I think I
756		asked Officer (Brown). Um, I believe once BFD was on the scene I asked her,
757		uh, what was - what was this about? And she said he had a \$10,000 warrant.
758		Olean Co to your knowledge it was because he had a warrant?
759	Q:	Okay. So to your knowledge it was because he had a warrant?

760

806	Q:	Did you
807 808	A:	at all.
809 810	Q:	did you at all see any officer kick Mr. (Moore) in any way?
811 812 813	A:	No.
814 815	Q:	Did an- did you see any officer deploy their OC and use it on Mr. (Moore)?
816 817	A:	No.
818 819	Q:	Did you at any point see any officer use their (unintelligible) baton or any other blunt object, uh, on Mr. (Moore)?
820 821	A:	No.
822 823 824	Q:	Okay. Did any, uh, officer discharge a firearm?
825 826	A:	No.
827 828	Q:	Did any o- officer use a firearm as a blunt object?
829	A:	No.
830 831 832	Q:	Okay. Um, uh, in terms of arriving officers on scene was yourself and Sergeant (Cardoza), was there any other ranking officer on scene?
833 834 835 836 837	A:	Sergeant (Ross) was on scene, IFO department. Uh, to my knowledge he never came up to the fifth floor and never came inside. I never saw him inside. He was just in front of the apartment building. He - he initially answered up on the radio first as the - as - as the supervisor unit.
838 839 840	Q:	Mm-hm.
841 842	A:	Um, but Sergeant (Cardoza) and I were the first w- we beat him to the s- we were there first.
843 844 845 846	Q:	Okay. Who are the - who - who are the, uh, supervisors working during that - during the time of that incident, which, uh, sergeant rank officers were working with you?
847 848 849 850	A:	Sergeant, uh, from team three it was Sergeant (Ross) and Sergeant (Cardoza). And then from team four it was myself and Sergeant Huynh, uh, S-26.

896 897 898 899 900 901 902		in his bag that was with him. And I also located two - I believe one or two crack pipes in his bag, um, before he left. And so he admitted to me at that time that he had been drinking alcohol but he didn't - he told me he hadn't smoked crack, uh, that day. So the dad had, you know, had told us - debriefed us that he has, you know, an issue with alcohol and drugs and that it's an ongoing everyday, uh, struggle and, you know, so we had that whole conversation. So we spent a lot of time with the family and mom showed up
903 904 905 906 907		later and ultimately it - it ended peacefully and he ended up goin' to the hospital. Uh, but I - I - I specifically remember him because he looks like a - a - a woman. He has, you know, braids in hair and he was dressed like a wo- in woman's clothing. Um, but that his name was (Xavier) and I'm pretty sure he goes by the name (Xavier). I can't - I can't remember. But it was
908 909 910	Q:	That was the one time
911 912	A:	That was
913 914	Q:	then?
915 916	A:	the one time yeah.
917 918 919 920	Q:	Okay. And - and did you know at the, uh, when you walked in did you - when you recognize him - you reco- you remembered he was - he had these, uh, mental health issues
921 922	A:	Yeah.
923 924	Q:	on the scene? Okay all right. Uh, uh, do you have anything?
925 926 927 928	Q1:	(Amber) when you first came in and you describe that you saw him face down, uh, on the bed and he's still resisting, do you remember the position that his face was in in relation to the bed?
929 930 931 932 933 934 935 936 937 938 939 940	A:	I couldn't see his face because there were so - there were so many officers but it was - he was - he was on his stomach. I can't say that his face was like in the mattress or anything. I could see that his hair - i - i - it's possible his face was turned to the side, um, and that officers were just trying to hold him. I - I - I do - I remember someone asking for the spit mask and thinking is he spitting? So I remember knowing that his - I don't think they had control - that his fa- you know what I mean? They didn't have him face down because I remember thinking they're trying to keep him from spitting at people. Um, but I couldn't see it enough to tell you specifically. Like I didn't get a profile view or anything because, uh, there just were too many officers and his hair was everywhere and I couldn't see.

INTERVIEW WITH SGT. (AMBER) PHILLIPS
Interviewer: Sgt. Hong
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986 987	A1:	I don't have any questions.
988 989 990	Q:	You have anything else you want to add that we may want to (unintelligible) may be good for us to know?
991		
992	A:	No I think that's it. I covered it.
993		11 Support (Ambor) Phillips It is 2102
994	Q:	This is the end of the interview with Sergeant (Amber) Phillips. It is 2102
995		hours.
996		
997		
998		has been reviewed with the audio recording submitted and it is an accurate
999	transcription.	
1000	Signed	

1 2 3 4 5 6 7 8 9 10 11 12 13		INTERVIEW WITH SGT. (BEN) CARDOZA Q=Sgt. Hong Q1=Det. Johnson Q2=(Harry) Stern A=Sgt. (Ben) Cardoza
14 15	Q:	Okay. February 13, 2009 hours. Interview with Sergeant (Ben) Cardoza, C-A-R-D-O-Z-A. Uh, this is Sergeant Hong, H-O-N-G.
16 17	Q1:	Detective Johnson, J-O-H-N-S-O-N, badge 26.
18 19	Q2:	I'm (Harry) Stern, S-T-E-R-N.
20 21	A:	Sergeant Cardoza, C-A-R-D-O-Z-A.
22 23	Q:	And Sergeant Cardoza, you signed your, uh, waiver?
24 25	A:	Yes.
26 27 28 29 30	Q:	Okay. All right. So, um, to begin with, uh, c-could you state your rank and badge number?
	A:	Police sergeant, badge S31.
31 32	Q:	Uh, what was your, uh, date of hire with Berkeley Police Department?
33 34 35 36 37 38	A:	My initial date of hire was I believe July 12 of 99 and I was sworn in middle of December of 99.
	Q:	Do you have any prior law enforcement experience outside of the Berkeley Police?
39 40	A:	No.
41 42	Q:	Uh, which patrol operations team do you currently work?
43 44 45	A:	Team three.

91	A:	After yesterday's shift documentation but not.
92		
93	Q:	Okay, extended.
94		
95	A:	Yes.
96		
97	Q:	Okay.
98		
99	A:	Extended.
100		11 and 11 and 11 and 11 and overtime?
101	Q:	But prior to yesterday's shift would you - did you work any overtime?
102		
103	A:	No.
104		the state of the s
105	Q:	Have you taken any medication, prescription or otherwise?
106		
107	A:	Advil.
108		1 1 1 1 in the most 24 hours?
109	Q:	Advil. Have you consumed any alcohol in the past 24 hours?
110		
111	A:	No.
112		1' - 1 ditions?
113	Q:	Do you have any medical conditions?
114		None that impact my joh
115	A:	A h- whole series of them. None that impact my job.
116		Okay. So you are f- you are considered full duty when it comes to the city -
117	Q:	
118		city, uh – um
119		47
120	A:	Yes.
121	_	Yeah. Yeah. So you are considered full duty? You have no limitations?
122	Q:	Yean. Yean. So you are considered full daty. Toursand and
123		
124	A:	No.
125	_	Okay. Uh, when was the last time you slept, uh, prior to yesterday's shift
126	Q:	Okay. On, when was the last time you slept, and passed in
127	4	T TL
128	A:	Uh
129	0.34	and how long?
130	Q:	and now long:
131	A 22	the night prior approximately seven hours.
132	A:	
133	0.	Seven hours. Okay. Uh, did you sustain any injuries during yesterday's
134	Q:	incident?
135		mordon:

181		
182	A:	Yes.
183		' ' analaida aamaat?
184	Q:	All right. Uh, and you're a single car supervising vehicle, correct?
185		
186	A:	Yes.
187		
188	Q:	All right. Um, okay. Did you complete a police report, uh, regarding
189	ζ.	yesterday's incident?
190		
191	A:	No.
	Α.	
192	0.	Okay. Um – uh, so we're gonna get – we're gonna start speaking about the
193	Q:	incident, uh, from yesterday. We're gonna go step by step. And so, um, if you
194		can start by telling us, uh – uh, n- the incident location is, um, 2116
195		
196		(Austin)
197		V
198	A:	Yes.
199		5149
200	Q:	apartment 514?
201		
202	A:	Yes.
203		that we're speaking about is
204	Q:	Okay. And a subject that, uh – uh, of interest, uh, that we're speaking about is
205		a person, (Xavier), uh, (Moore).
206		
207	A:	Yes.
208		2116 (Avetin)
209	Q:	And he's a deceased (unintelligible). So did you go to 2116 (Austin)
210		apartment 514 yesterday?
211		
212	A:	Yes.
213		
214	Q:	Okay. Can you tell us why you went there?
215	ζ.	
216	A:	I responded to the scene affis- after officers on scene requested code three
217	11.	cover.
218		
	0.	Do you remember who requested code three cover?
219	Q:	Do you tememost was a 4"
220	Α.	I believe it was Officer Brown.
221	A:	Toeneve it was officer brown.
222	0	Do you - can you recall any of the verbiage you used on the radio traffic?
223	Q:	Do you - call you recall any of the verotage you asked
224		I I con't
225	A:	I-I can't.

271 272	Q:	(4):	Okay. So can you describe, uh, the, uh – the area of this apartment and, uh, before we discuss what – what you saw inside?
273 274 275 276 277	A:		The – the apartment is located on the north side of the building. There's a central courtyard in the building. When you exit the elevator you go north or left and wind your way around and I think it's – it's almost in the middle of that north side.
278 279 280 281	Q:		Okay. So when you arrived and was, uh – was the, uh, door to apartment 514 open or – or closed?
282 283	A:		Open.
284 285	Q:		Okay. Okay. Was there any officers in the hallway when you first arrived?
286	A:		I don't believe so.
287 288 289	Q:		Okay. Okay. So when you looked into the apartment through the open door, describe for me what you saw to the best of your recollection.
291 292 293 294 295	A:		When I looked inside there was a group of officers restraining an individual on a mattress inside I guess it's be like, the main room of the apartment towards the – the east wall of the apartment. The mattress was on the floor and the officers were on top of the individual. The individual was screaming and actively resisting, both kicking and fighting the officers.
296 297 298 299 300 301	Q:		Okay. Before we get to some more specifics, do you recall when you arrived can you tell us the names of the officers that were inside the apartment? Not what they were doing, but all the officers that were inside the apartment when you arrived. Can you recall?
302	A:		I can recall some of them, not
303 304	Q:		Okay, the ones that you recall, can you c- tell us their name - their names?
305 306 307	A:		Officer Mathis, Officer Brown, Officer Tu, and I know there were several others but those were the – what I remember seeing.
308 309 310 311 312 313 314 315	Q:		Okay. Officer Mathis, M-A-T-H-I-S, Officer Brown, B-R-O-W-N, Officer Tu, T-U. And there was several other officers. Okay. Got it. Now you said that, um, when you, uh, looked in at officers – at – at least Officers Mathis, Brown, Tu, and potentially others were in a fight with the, uh – with, uh, Mr. (Moore). Uh, you said that Mr. (Moore) was screaming. Can you recall what exactly words he was screaming or what he was saying?

361 362	Q:	Okay. Um, do you know – do you remember if it was Officer – did you at all assist in the physical struggle?
363 364	A:	No.
365 366 367	Q:	Okay. Do you recall if Officer f- or Sergeant (Phillips), uh, attempted to assist, uh, officers in the physical struggle?
368 369	A:	I don't believe so.
370 371	Q:	Okay. You're not sure?
372 373	A:	Not sure.
374 375	Q:	Okay. Um, would you characterize Mr. (Moore) as fighting the officers?
376 377	A:	Yes.
378 379 380	Q:	Okay. Could you describe why you believe Mr. (Moore) was fighting the officers as opposed to complying?
381 382 383 384	A:	He was actively resisting. He was attempting to use his feet to kick the officers. He was squirming around on the mattress, just moving and not compliant with the officers.
385 386	Q:	Did you hear any commands by officers for compliance?
387 388	A:	I don't recall.
389 390 391	Q:	So the struggle is continuing. Eventually, um, is Mr. (Moore) controlled in some fashion?
392 393	A:	Yes.
394 395 396	Q:	Okay. Could you describe what you mean by he's con- by how s- he's controlled?
397 398 399 400 401 402		He – he was controlled. The officers were eventually able to handcuff him and then Officer Mathis was able – on my way up the elevator I brought a wrap just in case and from the nature of it and I guess while on the elevator they requested a wrap. But we were able to control Mr. (Moore)'s ankles by just using the I guess the ankle strap of the wrap and that was it.
403 404 405	Q:	Okay. And when you say, uh, the officers were successful in handcuffing Mr., uh, (Moore), uh, w- is there a standard handcuffing that they did

451		
452	A:	Correct.
453 454 455 456	Q:	Okay. Okay. So when you left the apartment to, uh, make sure BFD finds their way to the apartment you're saying that mis- at that point Mr. (Moore) was still in a active, uh, res- resisting mo- he was resisting?
457 458	A:	Yes.
459 460 461 462	Q:	Even though the handcuffs were on and the ankle tie was ma- uh, ankle restraint was done when you left he was still in the, uh, physical, um, act of resisting?
463 464	A:	Correct. He was still agitated
465 466	Q:	Okay.
467 468 469	A:	and still
170 171 172	Q:	All right. All right. When you left the last position you saw Mr. (Moore) was what position – his body?
472 473 474	A:	Face down on the mattress.
475 476	Q:	On the mattress?
477 478	A:	Yes.
479 480 481 482	Q:	Okay. All right. Now you said specifically, uh, that, um – scratch that. During your time inside the apartment did you at all ever see officers putting their, uh – um, fully on top of Mr. (Moore)?
483 484	A:	Not that I can recall.
485 486	Q:	Do you recall at all seeing any officers, uh, on top of Mr. (Moore)'s head?
487 488	A:	No.
489 490	Q:	Mr. (Moore)'s neck?
491 492	A:	No.
493 494	Q:	Chest area?
495	A:	I can't recall.

5.41		Did any w- officers use their sidearm or their duty pistol to hit Mr. (Moore)
541 542	Q:	with?
543		
544	A:	No.
545 546 547	Q:	Okay. Um – um, and also kicking. Did you see any officers kick Mr. (Moore)?
548	A:	No.
549 550 551	Q:	And after you left to make – ensure that BFD will find their way back – so you went down?
552 553	A:	Yes.
554 555	Q:	But you took the elevator?
556 557	A:	Yes.
558	A.	
559 560	Q:	And when you went down and you waited – so tell us b- what happened after when you went down.
561 562 563 564	A:	I went down, waited I don't know less than a minute or so, and as the engine rolled up – the fire department engine rolled up I heard over the air one of the officers say I believe starting CPR.
565 566	Q:	Okay.
567 568 569 570 571	A:	And I advised the paramedics that the nature of the call had changed from what I guess they initially said and said that officers were starting CPR on the individual. And then myself and the fire engine crew went back up the elevator.
572 573	Q:	So you accompanied the paramedics to the apartment?
574 575	A:	Yes.
576 577 578	Q:	Okay. Once you arrived back at the apartment with the, um, paramedics, what was your observations of what was going on?
579 580 581 582 583		From what I saw is I entered the apartment. Mr. (Moore) was on his back now to the – I guess to the left of the mattress so on the floor. I'm pretty sure hi- he was uncuffed. The, uh – the leg restraint was still on him so the – the strap was still on him. And Officer Tu is doing chest compressions on Mr. (Moore).
584 585		And after the paramedics arrived they took over the CPR process?

631		Olsov
632	Q:	Okay.
633 634	A:	And believe at that point in time that was it.
635 636 637 638 639 640 641 642	Q:	Okay. Um, did you have a – I 'm – I'm assuming you had a chance to observe Mr. (Moore). Do you – would you, um, characterize Mr. (Moore) based on your training and experience and I don't know the specifics on your training and experience in this, uh, topic but do y- would you consider, uh, Mr. (Moore) as been – being under the influence of some type of – under the influence of drugs or alcohol?
643	A:	Possibly.
644 645	Q:	Possibly. Okay. But you can't be certain?
646 647	A:	No.
648	Λ.	
649 50	Q:	Okay. You yourself never went hands on with Mr. (Moore)?
651 652	A:	No.
653	Q:	Never touched him?
654 655	A:	No.
656 657	Q:	Okay. Um, have you ever had any prior contacts with Mr. (Xavier Moore)?
658 659	A:	No.
660 661	Q:	Do you have any prior knowledge of Mr. (Xavier Moore)?
662 663	A:	No.
664	Q:	And let me take a pause and think (unintelligible) anything?
666 667	Q1:	(Unintelligible).
668 669		Mr. Stern?
670 671 672 673	Q2:	Sure. I have a quick one. During the time you were in apartment 514 and you had the opportunity to observe the struggle did Mr. (Moore) ever say anything like, "I'm having trouble breathing."?
674 675		Not that I recall.

721	A:	Correct.
722 723	Q:	Okay. Do you know what his relationship was to the apartment?
724 725	A:	I do – I do not.
726 727	Q:	You don't know?
728 729	A:	I be- believe he was a friend visiting or
730		Okay.
731	Q:	•
732 733 734 735	Q2:	When the officers are first – when you first showed up and saw the officers attempted to restrain him at that point would you say that he was verbal, he was yelling and making noise?
736 737	A:	Yes.
738 739 740 741	Q2:	This – that Mr. (Moore) was? Okay. Um, and you – at – at no point did you – I think you already asked this actually. Did you, um – and d- did appear that he was unable to make noise or breathe or any indication of that?
742 743	A:	Not while I was there.
744 745	Q2:	Okay. Um
746 747	Q:	Do you recall how he was dressed – Mr. (Moore)?
748 749 750 751	A:	I think he had what looked like a blanket or something – he was almost naked – just wrapped around his an- while the fight happened it needed up around his thighs. So
752 753	Q:	You said a blanket?
754 755	A:	Blanket or some type of sheet or something
756 757	Q:	Okay.
758 759	A:	to that
760 761 762 - 763 764	Q:	Um, okay. And, uh, I think you spoke earlier. You – you did, uh, complete some Berkeley Police Department, uh, documentation. What – what would have been those documentations you did?

INTERVIEW WITH SGT. (BEN) CARDOZA Interviewer: Sgt. Hong 02-13-13/8:09 pm Case # 2013-08510 Page 19

810 811 812 813	Q:	Is there anything you'd like to add that – that we may have missed or you think is, uh – uh – um, w- valuable for us to hear?
814	A:	No.
815	71.	
816	Q:	All right. End of the interview with Sergeant Cardoza. It is 2038 hours.
817	3	
818		1 1
819	This transcript ha	as been reviewed with the audio recording submitted and it is an accurate
820	transcription.	
821	Signed	

Radio Traffic Timeline / Enhanced Courier

February 12, 2013 Call is dispatched to 3A4 (Brown) and 4A5 (B. Smith) 23:54:18 4A3 (Tu) attaches himself to the call 23:57:16 Brown arrives on-scene 23:57:36 Tu and Smith arrive on-scene 23:58:07 Brown requests call into Reporting Party (Hayes) 23:58:29 Dispatch advises Hayes is stepping out 23:59:57 February 13, 2013 B. Smith requests records checks on Hayes and Moore w/RB1 00:11:25 RB1 advises Hayes has a \$5,000 warrant/SF 00:16:54 RB1 advised Moore has caution code for PC 245 (a)(1) 00:19:52 B. Smith confirm warrants on Hayes w/RB1 00:21:09 Brown requests additional cover, 4A6 (Mathis) and 4A7 (Kastmiler) 00:29:14 assigned 3A16 (Gardner) requests address, S25 (Ross) responding 00:29:49 Mathis asks dispatch for room (apt.) number, advised 514 00:30:44 Kastmiler requests a WRAP 00:32:48 S17 (Phillips) and S31(Cardoza) on-scene with a WRAP 00:32:56 Kastmiler requests spit mask 00:33:02 Ross to confirm WRAP on-scene 00:33:12 Kastmiler advises they have a WRAP, S31in the apt. 00:33:17 Phillips requests a spit mask 00:33:24 3A2 (Kaplan) on-scene, check for spit mask in cars 00:34:00 Mathis advised a spit mask is in his bag 00:34:14 Phillips requests BFD, Code 3 w/gurney, WRAP no sufficient 00:34:35 Phillips advises Code 4 / Code 34 00:35:05 Dispatch confirms BFD needed for both gurney and medical 00:39:24 Phillips confirms and advises subject is having trouble breathing Code 3 response requested Phillips advises subject not breathing, starting CPR 00:41:03 BFD on-scene 00:41:22 Ross broadcast they are advising BFD the need to expedite 00:41:30 BFD advised 00:41:47 Cardoza request ID Tech, ID Tech enroute 00:54:23 Phillips request additional unit 00:57:22 4A9 (McIntosh) enroute 00:57:40

Radio Traffic Timeline / Enhanced Courier

01:07:04 01:10:35 01:30:46 01:33:26 01:36:22 01:39:00 01:44:44 02:09:41	Tu enroute to Alta Bates B. Smith clears scene, enroute to jail 3A14 (A. Frankel) Out at ABH Cardoza at ABH Tu enroute to station Phillips clear Allston, enroute to station Mathis request keys from B. Smith Mathis broadcast BPD units are clear from the Gaia Building
08:03:15 08:11:23 09:40:00	1A2 (Pierantoni) assigned to secure 2116 Allston #514 Pierantoni posted IFO #514 Pierantoni relieved of post by detective unit

COMMUNICATION CENTER TAPE

FEBRUARY 12, 2013 AT 2349 CHANNEL ONE

Dispatcher:

Berkeley 911 Emergency.

Caller:

Yes, I would like the police to come up to 2116 Allston Way.

Dispatcher:

What's happening at 2116 Allston?

Caller:

Okay, my roommate is acting a fool. He needs to go to the psych ward.

Somebody needs to check him in. My name is on the lease okay.

Dispatcher:

Okay, wait one second. 2115 or 16?

Caller:

2116.

Dispatcher:

16.

Caller:

The Gaia building.

Dispatcher:

Which apartment number?

Caller:

514. I'll be standing out front.

Dispatcher:

Okay. Before you get off the phone I need to get some more information

from you. Okay your roommate you said needs to be 5150'd?

Caller:

Yes.

Dispatcher:

Does he take medication?

Caller:

Well he should be taking medication but he's declining. He hasn't taken it or

hasn't been taking it for a long time.

Dispatcher:

Okay.

Caller:

But he still knows what he's doing and what he's doing --

Dispatcher:

What is his name sir?

Caller:

No, he is on medication, it's just the he hasn't taken it for so long.

Dispatcher:

Do you know what is diagnosis is? Is he paranoid schizophrenic? What is

he?

Caller:

No, one is schizoid effective and the other two they don't have names for. But he still knows what he's doing and he also has been drinking alcohol.

Dispatcher:

Okay, you're going to meet us in the front?

Caller:

Yes, I'll be out front.

Dispatcher;

Okay, we'll get an officer there.

Caller:

Thank you.

Dispatcher:

Okay, bye.

Caller:

Bye.

COMMUNICATION TAPE

FEBRUARY 12, 2013 AT 2354 CHANNEL NINE

Dispatcher

10-4, 4 Adam 5, 1 5 – 415 between roommates at the Gaia Building, 2116

Alston

Officer:

Five check.

Dispatcher:

It's going to room 514 at 2116 Alston between roommates. Apparently one according to the RP is schizophrenic and off his meds and possibly 647(f). It's was so long UI. One of the responsible is going to be Xavier Moore, a black male 43 with some type of sarong on and a wrap. Prior events show a

couple of medicals, 1042s, no weapons and possible medical eval.

Officer:

The room number again.

Dispatcher:

5 1 4, 514.

Officer:

Copy.

Officer:

516 10 Adam 7

Dispatcher:

10-4.





Login ID: ksmith

Print Date/Time: 03/11/2013 12 48

From CFS: To CFS:

500 500 From Date: To Date:

01/11/2013 08:19 01/11/2013 08:19 CFS Type: Agency Type: ΑII

Layer: All

CFS Number:

500

Areas: 01/11/2013 08:19:14 Call Date/Time:

Dispatch Time:

Primary Incident:

01/11/2013 08:22 31

2013-00000331

Location:

2116 ALLSTON WAY 514 BERKELEY, CA 94710, Berkeley

Arrive Time:

01/11/2013 08:25:55

Additn! Loc Info:

Common Name:

GAIA APT BUILDING

Clear Date/Time:

01/11/2013 09:38:08

Phone:

(510)841-1195

Nature Of Call:

Created By: Canceled:

Robinson, Carmen

Call Type:

MEDICAL

Report Required:

No

No

Status:

IN PROGRESS

Priority:

Source:

911 Call

Police ORI:

CA0010300

EMS ORI:

Fire ORI:

01015

Person Information

Name

Person Type HAYES JOHN E911

Address

Phone

Race

Sex

DOB

Age

SSN

Narrative, Questionnaire Responses, TDD Text

Create Time 1/11/2013 08:19:14

01/11/2013 08:20:04

01/11/2013 08:20:40

Created By Robinson, Carmen

Robinson, Carmen

Narrative

E911 Info - Class of Service, RESD Special Response Info BERKELEY FIRE

BERKELEY FIRE AMB

Nature Of Call 1042

woman says she WAS having trouble breathing, and she will " get back to us " later... Robinson, Carmen

woman says " i dont want you guys calling", " ill call back when i get to my part of the

universe'

Robinson, Carmen 01/11/2013 08:20 59

Saechao, Kathy 01/11/2013 08:21:59

Saechao, Kathy

rp is calling back states difficulty breathing

01/11/2013 08:22:04 01/11/2013 08:22:12

Saechao, Kathy

rp: xavier moore

Associated Areas

Area Type Code

Description

Quadrant

041 Sta 2

Station Beat

4É

District

Police ORI

CA0010300

EMS ORI

Fire ORI

01015

Incident Number(s)

Incident Number 2013-00000331

ORI Number 01015

Primary Unit Yes

Department Name Berkeley Fire Department Agency Type

Fire

Unit(s)

1nit M2

Primary Unit

Radio Number

Personnel

E2

No Yes Medic 2 Engine 2

Page: 1 of 3



Login ID: ksmith

Print Date/Time: 03/11/2013 12:48

From CFS: To CFS: 500 500

0 From Date: 0 To Date:

Date: 01/11/2013 08:19 **ate:** 01/11/2013 08:19

CFS Type: Agency Type: ΑII

CFS Number:

500

Areas:

Call Date/Time: 01/11/2013 08:19:14

Primary Incident: 2013-00000331

Unit Log			Chatria	Action	Description	Location
Log Date/Time	Entered By	Unit	Status		Восоприон	2116
01/11/2013 08:22:31	Saechao, Kathy	M2	Dispatched	Unit Status Change		ALLSTON WAY, Berkeley
01/11/2013 08:22:31	Saechao, Kathy	E2	Dispatched	Unit Status Change		2116 ALLSTON WAY, Berkeley
01/11/2013 08:23:57	Engine 2	E2	Enroute	Unit Status Change		
01/11/2013 08:24:50	Medic 2	M2	Enroute	Unit Status Change		
01/11/2013 08:25:55	Engine 2	E2	On Scene	Unit Status Change		
01/11/2013 08:27:27	Saechao, Kathy	M2	On Scene	Unit Status Change		
01/11/2013 08:34:39	Engine 2	E2	Available	Unit Status Change		
n1/11/2013 08:34:39	Engine 2	E2	Available	Unit Cleared	Unit cleared from call	
1/11/2013 08:35:14	Saechao, Kathy	M2	Transporting	Unit Status Change		abh
01/11/2013 08:42:49	Saechao, Kathy	M2	At Hospital	Unit Status Change		
01/11/2013 09:33:51	Medic 2	M2	Available	Unit Status Change		
01/11/2013 09:33:51	Medic 2	M2	Available	Unit Cleared	Unit cleared from call	



Login ID: ksmith

Print Date/Time: 03/05/2013 10:36

From CFS:

393

From Date:

01/10/2013 19:19

CFS Type:

All

To CFS: Layer: All 393

To Date: Areas:

01/10/2013 19:19

Agency Type:

CFS Number:

393

Call Date/Time:

01/10/2013 19:19:36

Primary Incident: 2013-00001815

Associated Areas

Area Type Code

Description 041

Quadrant Station

Sta 2 4E

Beat District

Police ORI

CA0010300

EMS ORI

Fire ORI

01015

Incident Number(s)

Incident Number 2013-00001815

ORI Number CA0010300

Primary Unit

Department Name

Berkeley Police Department

Agency Type

Police

Unit(s)

Unit 3A18 ٦**A**4

Primary Unit Nο No

3A18 3A04

Radio Number

Personnel 02740 Galvan

01241 Brown

Page: 2 of 5



Login ID: ksmith

Print Date/Time: 03/05/2013 10:36

From CFS: To CFS:

393

From Date:

01/10/2013 19:19

CFS Type:

Αll

Layer: All

393

To Date: Areas:

01/10/2013 19:19

Agency Type:

CFS Number:

393

Call Date/Time: 01/10/2013 19:19:36

Primary Incident: 2013-00001815

Call Log

Call Log			
Log Date/Time	Entered By	Action	Description
01/10/2013 19:58:41	Edwards, Valentin A.	Unit Status Action	Unit 3A4 Dispatched
	Edwards, Valentin A		Unit 3A4 On Scene
01/10/2013 19:58:44	Edwards, Valentin A		PH TO RP 654-9684
01/10/2013 19:58:53		Narrative Added	Dispatch received by unit 3A4
01/10/2013 20:14:42	Brown, Gwendolyn		Spoke with RP via telephone, per her request. Information was provided
01/10/2013 20:17:24	Brown, Gwendolyn	Narrative Added	Primary/No Paper
	D. C. C. Condolyn	Call Updated	Dispositions Changed
01/10/2013 20:18:01	Brown, Gwendolyn		Unit 3A4 cleared from call
01/10/2013 20:18:01	Brown, Gwendolyn	Unit Status Action	Offic 57 (4 died. ee n. c
01/10/2013 20:18:01	Brown, Gwendolyn	Call Cleared	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:53

From CFS: To CFS:

981

From Date:

08/11/2012 16:55 08/11/2012 16:55 CFS Type: Agency Type: Αli

Layer: All

981

To Date: Areas:

ΑII

981 **CFS Number:**

Call Date/Time: 08/11/2012 16:55:31

Primary Incident: 2012-00043466

Associated Areas

Area Type Code

Description

Quadrant

003

Station

Sta 1

Beat

13S

District

Police ORI

CA0010300

EMS ORI

Fire ORI

01015

Incident Number(s)

Incident Number 2012-00043466

ORI Number CA0010300

Primary Unit

Yes

Department Name Berkeley Police Department **Agency Type**

Police

Unit(s)

Unit 3A13

3A11

Primary Unit

Radio Number

Personnel 10906 Collier

Yes No

3A13 3A11

11400 Salazar



Login ID: ahawk

Print Date/Time: 03/07/2013 12:53

From CFS: To CFS:

981

From Date: To Date:

08/11/2012 16:55 08/11/2012 16:55 CFS Type: Agency Type: All

Layer: All

981

Areas:

Αll

Primary Incident: 2012-00043466 Call Date/Time: 08/11/2012 16:55:31 981 CFS Number:

Call Log				Description		
Log Date/Time	Entered By	Action		Description Dispositions Changed		
08/11/2012 17:47:34	Salazar, Miguel	Call Updated		Dispositions Changes		
08/11/2012 17:47:34	Salazar, Miguel	Call Clear	ed			
Unit Log			Otatus	Action	Description	Location
Log Date/Time	Entered By	Unit	Status	Unit Status		1279
08/11/2012 16:59:39	Johnson, Rayna T	3A13	Dispatched	Change		ALCATRAZ AVE, Berkeley
08/11/2012 16:59:39	Johnson, Rayna T.	3A11	Dispatched	Unit Status Change		1279 ALCATRAZ AVE, Berkeley
08/11/2012 16:59:41	Johnson, Rayna T.	3A11	Enroute	Unit Status Change		
08/11/2012 16:59:41	Johnson, Rayna T _v	3A13	Enroute	Unit Status Change		
08/11/2012 17:01:50	Johnson, Rayna T	3A13	On Scene	Unit Status Change		
08/11/2012 17:01:50	Johnson, Rayna T	3A11	On Scene	Unit Status Change		1279
08/11/2012 17:46:49	Collier, Jason	3A13	On Scene	Disposition Added	Primary - No Paper	ALCATRAZ AVE, Berkeley
08/11/2012 17:46:49	Collier, Jason	3A13	Available	Unit Cleared	Unit cleared from call	
08/11/2012 17:46:49	Collier, Jason	3A13	Available	Unit Status Change		4070
08/11/2012 17:47:34	Salazar, Miguel	3A11	On Scene	Disposition Added	Officer Assisted	1279 ALCATRAZ AVE, Berkeley
08/11/2012 17:47:34	Salazar, Miguel	3A11	Available	Unit Cleared	Unit cleared from call	
08/11/2012 17:47:34		3A11	Available	Unit Status Change		
08/11/2012 17:47:34	Salazar, Miguel	3A11	Available	Disposition Added	Officer Assisted	



2

Login ID: ahawk

Print Date/Time: 03/07/2013 12:55

Disposition Count

From CFS: To CFS:

880

From Date: To Date:

08/11/2012 11:13 08/11/2012 11:13 CFS Type: Agency Type: Ail

Layer: All

880

Areas:

ΑII

08/11/2012 11:13:28 Call Date/Time: 880 **CFS Number:**

Primary Incident: 2012-00043461

Dispositions

Disposition

Assist

Associated Areas

Area Type Code

Quadrant

Station

Beat

District

Police ORI

EMS ORI

Fire ORI

Incident Number(s)

Incident Number 2012-00043461

ORI Number CA0010300

Description

CA0010300

01015

003

Sta 1

13W

Primary Unit Yes

Department Name

Agency Type Police Berkeley Police Department

Unit(s)

Unit 3A13 3A11

Primary Unit Yes

No

Radio Number 3A13

3A11

10906 Collier 11400 Salazar

Personnel



Login ID: ahawk

Print Date/Time: 03/07/2013 12:55

From CFS: To CFS: 880 880

880

From Date: To Date:

Areas:

08/11/2012 11:13 08/11/2012 11:13 CFS Type: Agency Type:

. All

Layer: All

CFS Number:

880

All

Call Date/Time: 08/11/2012 11:13:28

Primary Incident: 2012-00043461

Call Log		Action	Description
Log Date/Time	Entered By		4TH CALL FOR SERVICE
08/11/2012 15:45:52	Smith, Shannon	Narrative Added	
08/11/2012 16:04:54	Robinson, Carmen	Narrative Added	rp states she couldnt wait any longer, and she walked up to her parents house alone
08/11/2012 16:07:03	Robinson, Carmen	Narrative Added	rp states her dad slammed the door in her face, and she is still waiting for service
08/11/2012 16:16:16	Robinson, Carmen	Call Type	NewCallType: 415, Status: In Progress, Priority: 2
08/11/2012 16:16:18	Robinson, Carmen	Call Updated	Progress: COLD REPORT, Priority: 4
08/11/2012 16:48:12	Johnson, Rayna T.	Incident Created	Added Incident Number, ORI: CA0010300, Number: 2012-00043461
08/11/2012 16:48:12	Johnson, Rayna T.	Unit Status Action	Unit 3A13 Dispatched
08/11/2012 16:48:12	Johnson, Rayna T.	Unit Status Action	Unit 3A11 Dispatched
08/11/2012 16:48:14	Collier, Jason	Narrative Added	Dispatch received by unit 3A13
08/11/2012 16:48:17	Johnson, Rayna T.	Unit Status Action	Unit 3A11 Enroute
08/11/2012 16:48:17	Johnson, Rayna T	Unit Status Action	Unit 3A13 Enroute
08/11/2012 16:48:20	Johnson, Rayna T.	Narrative Added	C4
08/11/2012 16:48:56	Salazar, Miguel	Narrative Added	Dispatch received by unit 3A11
08/11/2012 16:55:18	Collier, Jason	Narrative Added	GOA, RP's father said Moore not allowed in his residence, Area check neg
08/11/2012 16:56:10	Salazar, Miguel	Call Updated	Dispositions Changed
08/11/2012 16:56:10	Salazar, Miguel	Unit Status Action	Unit 3A11 cleared from call
08/11/2012 16:56:12	Collier, Jason	Narrative Added	RP GOA. Not at his parents' residence. Father stated he is no longer allowed there.
08/11/2012 16:56:47	Collier, Jason	Call Updated	Dispositions Changed
08/11/2012 16:56:47	Collier, Jason	Unit Status Action	Unit 3A13 cleared from call
08/11/2012 16:56:47	Collier, Jason	Call Updated	Dispositions Changed
08/11/2012 16:56:47	Collier, Jason	Call Cleared	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:55

From CFS: To CFS:

880

From Date: To Date:

08/11/2012 11:13 08/11/2012 11:13 CFS Type: Agency Type:

All

Layer: All

880 880

Areas:

Call Date/Time: 08/11/2012 11:13:28

Primary Incident: 2012-00043461

1\SEX=M\UID=*SMURRAY

LEWI_AWS

NCIC Messages

CFS Number:

NCIC Message Time 08/11/2012 15:33

NCIC Message N75600103DUZI

00000322

All

LEWINAMEINQWI=SISTK=AINAME=MOORE,XAVIERIDOB=

08/11/12 15:33 PROD (Q,P) AWS: WARRANT INQUIRY MSG:NO INFORMATION FOUND ON AWS - REQUEST SENT TO CLETS

##END: OF AWS RESPONSE #

08/11/2012 15:33

N75600103DUZI

000006133

1081112 1533

IN DUZI

DATE:08-11-12*TIME:15:33*

MATCHED ON:*L/N*F/N* BD

DMV RECORD FOR LAW ENFORCEMENT USE ONLY

NAME:MOORE XAVIER CHRISTOPHER* DL/NO: B/D:

MAIL ADDR AS OF 06-05-12: RES/ADDR: OTH/ADDR AS OF 05-31-06:

IDENTIFYING INFORMATION:

SEX:MALE*HAIR:BROWN*EYES:BRN*

ID CARD MLD:06-18-12*EXPIRES:04-17-18*BATES:LIS* ORGAN AND TISSUE DONOR: NO UPDATED:06-05-12

LICENSE STATUS: NONE ISSUED* DEPARTMENTAL ACTIONS: NONE

CONVICTIONS: NONE

FAILURES TO APPEAR:

NONE ACCIDENTS: NONE END

N75600103DUZI

000002193

m81112 1533

08/11/2012 15:33

IM DUZI MPS INQUIRY

MISSING PERSON DATE:2012-08-11 TIME:15:33:17

RE:QM.CA0010300.MOORE,XAVIER.M.DOB/

*** NO MATCH ON NAM FIELD *** *** CHECKING NCIC ***

******* END OF MPS MESSAGE ********

000001593

081112 1533

08/11/2012 15:33

N75600103DUZI IJ DUZI

1L01 CA0010300

NO NCIC WANT NAM/M00RE,XAVIER D0B/

EX/M

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.



Login ID: ahawk

Print Date/Time: 03/07/2013 12:55

From CFS: To CFS:

880 880

From Date: To Date:

08/11/2012 11:13

08/11/2012 11:13

CFS Type: **Agency Type:** ΑII

Layer: All

880

ΑII Areas:

Call Date/Time: 08/11/2012 11:13:28

Primary Incident: 2012-00043461

CFS Number: 08/11/2012 15:33

N75600103DUZI

000017483

°081112 1533

IB DUZI

8AYX.CA0010300 RE: QRR.CA0010300.NAM/MOORE,XAVIER.SEX/M.DOB/19710417

MATCH MADE ON NAM/MOORE,XAVIER

NAME FIELD SEARCH REVEALS: CARPOS HIT # 001

HIT MADE ON AKA/MORA, JAVIER FCN/2440926502851 ORI/CA0191200 OCA/098591 NIC/H773904593

*** SERVED CRIMINAL PROTECTIVE ORDER ***

DO NOT ARREST OR DETAIN BASED SOLELY ON THIS RESPONSE

THIS RESTRAINING ORDER RESPONSE MAY BE THE SAME AS: PESTRAINED PERSON INFORMATION NAM/ESCOBAR, CARLOS ALATORRE

EYE/GRN HAI/BLK SEX/N GARCIA, JAVIER AKA/MORA GARCIA, JAVIER ESCOBAR, CARLOS G ALATORRE MORA, JAVIER OLN/D8849787.CA 2012 SOC/625678900

FBI/837654ED3

ADR/

CTY/PASADENA STT/CA

· · · · PROTECTED PERSON INFORMATION · · · · ·

PROTECTED PERSON NAME/MONTES, AMANDA

PROTECTED PERSON SEX/F PROTECTED PERSON RACE/H

PROTECTED PERSON DOB/

· · · · · COURT INFORMATION

RESTRAINED PERSON PRESENT IN COURT/YES

COURT NAME/LOS ANGELES COUNTY SUPERIOR-NORTH CENTRAL DIST (BURBANK)

COURT PHONE NUMBER/(818) 557-3482

COURT CASE NUMBER/9BR03060

ISSUE DATE/20101209 EXPIRATION DATE/20131209STATE OF ISSUANCE/CA

CONTACT PROTECTED PERSON/YES - THE RESTRAINED PERSON CAN CONTACT THE

FIREARM PROVISIONS/CANNOT PURCHASE OR RECEIVE AND MUST SURRENDER ALL

OTHER ORDERS/RP MUST NOT HARASS STRIKE THREATEN ASSAULT SEXUALLY OR OTHERWISE FOLLOW STALK MOLEST DESTROY OR DAMAGE PERSONAL OR REAL PROPERTY DISTURBTHE PEACE KEEP UNDER SURVEILLANCE OR BLOCK MOVEMENTS OF

... IMMEDIATELY CONFIRM WITH CA0191200 BURBANK PD BUR0

TELEPHONE 818 238-3140

********* VIOLATION MESSAGE ********* NUMBER OF PRIOR VIOLATION MSG/000 ******* END OF CARPOS MESSAGE *********

08/11/2012 15:33

N75600103DUZI

000001593

~081112 1533

IJ DUZI 1L01

CA0010300

NO NCIC WANT NAM/M00RE, XAVIER D0B/19710417 SEX/M

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS



Login ID: ahawk

Print Date/Time: 03/07/2013 12:56

From CFS:

577

From Date:

08/07/2012 15:58

CFS Type: **Agency Type:** All

To CFS: Layer: All

CFS Number:

577

577

To Date: Areas:

08/07/2012 15:58

08/07/2012 15:58:47 Call Date/Time:

Primary Incident: 2012-00042583

Associated Areas

Area Type Code

Description 003

Quadrant

Sta 1

Station Beat

13W

District

Police ORI

CA0010300

EMS ORI

Fire ORI

S17

01015

Incident Number(s)

Incident Number(s)			Danadmont Name	Agency Type
Incident Number	ORI Number	Primary Unit	Department Name	Police
2012-00042583 CA0010300		No	Berkeley Police Department	
Unit(s)				
Unit	Primary Unit	Radio Number	Personnel	
MH11	No	MH11		
7A17	No	7A17	09123 Tu	
7A15	No	7A15	11113 Kleppe	
7A13	No	7A13	09282 Lee	
	No	7A11	07446 Fleming	
7A11 S17	No	S17	08180 Phillips	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:56

From CFS: To CFS:

577

From Date: To Date:

08/07/2012 15:58 08/07/2012 15:58 CFS Type:

Αll

Layer: All

577

Agency Type:

Areas: Primary Incident: 2012-00042583 08/07/2012 15:58:47 Call Date/Time: **CFS Number:** 577

Call Log			Description
Log Date/Time	Entered By	Action	Unit S17 Dispatched
08/07/2012 16:36:49	Kwong, Jennie M.	Unit Status Action	Dispatch received by unit S17
08/07/2012 16:36:50	Phillips, Amber	Narrative Added	Unit S17 Enroute
08/07/2012 16:36:52	Kwong, Jennie M.	Unit Status Action	
08/07/2012 16:48:52		Unit Timer Expired	Unit S17;Enroute
08/07/2012 16:51:42	Tan, Eduardo J.	Unit Status Action	Unit 7A11 On Scene
08/07/2012 16:51:55	Tan, Eduardo J.	Narrative Added	bfd for 5150 eval
08/07/2012 16:52:44	Tan, Eduardo J.	Unit Status Action	Unit 7A13 Dispatched
08/07/2012 16:52:48	Lee, Susan S.	Narrative Added	Dispatch received by unit 7A13
08/07/2012 16:52:53	Tan, Eduardo J	Unit Status Action	Unit 7A13 On Scene
08/07/2012 16:52:57	Tan, Eduardo J.	Unit Status Action	Unit 7A17 On Scene
08/07/2012 16:53:24	Lee, Susan S.	Unit Status Action	Unit 7A13 Enroute
08/07/2012 16:53:35	Lee, Susan S	Unit Status Action	Unit 7A13 On Scene
08/07/2012 16:56:24	Tan, Eduardo J.	Unit Status Action	Unit 7A15 cleared from call
08/07/2012 16:56:57	Tan, Eduardo J.	Unit Status Action	Unit 7A17 cleared from call
08/07/2012 17:14:00	Lee, Susan S.	Narrative Added	Moore was placed on a W&I 5150 hold by MH.
08/07/2012 17:14:17	Lee, Susan S.	Person Added	Name: Moore, Xavier, Sex: Male, DOB: 04/17/1971, Type: INVOLVED PARTY
	Lee, Susan S.	Call Updated	Dispositions Changed
08/07/2012 17:14:36		Unit Status Action	Unit 7A13 cleared from call
08/07/2012 17:14:36		Unit Status Action	Unit 7A11 cleared from call
08/07/2012 17:15:03		Unit Status Action	Unit S17 On Scene
08/07/2012 17:19:31		Unit Status Action	Unit S17 rerouted to call 586
08/07/2012 17:25:43		Unit Status Action	Unit MH11 rerouted to call 639
08/07/2012 18:37:34		Unit Status Action	Unit 7A13 Dispatched
08/07/2012 19:12:05		Narrative Added	Dispatch received by unit 7A13
08/07/2012 19:12:07			Dispositions Changed
08/07/2012 19:12:11		Call Updated	Unit 7A13 cleared from call
08/07/2012 19:12:1		Unit Status Action	One in the description
08/07/2012 19:12:1	1 Lee, Susan S	Call Cleared	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:56

From CFS: To CFS:

577

77 From Date: 77 To Date: 08/07/2012 15:58 08/07/2012 15:58 CFS Type: Agency Type:

All

Layer: All

CFS Number:

577

577

Areas:

All

Call Date/Time: 08/07/2012 15:58:47

Primary Incident: 2012-00042583

Unit Log		Unit	Status	Action	Description	Location
Log Date/Time	Entered By	• • • • • • • • • • • • • • • • • • • •		Unit Status		
08/07/2012 16:53:35	Lee, Susan S.	7A13	On Scene	Change		
08/07/2012 16:56:24	Tan, Eduardo J.	7A15	Available	Unit Cleared	Unit cleared from call	
08/07/2012 16:56:24	Tan, Eduardo J.	7A15	Available	Unit Status Change		
08/07/2012 16:56:57	Tan, Eduardo J.	7A17	Available	Unit Cleared	Unit cleared from call	
08/07/2012 16:56:57	Tan, Eduardo J.	7A17	Available	Unit Status Change		
08/07/2012 17:14:36	Lee, Susan S.	7A13	On Scene	Disposition Added	Primary - No Paper	1303 SIXTY- SIXTH ST, Berkeley
08/07/2012 17:14:36	Lee, Susan S.	7A13	Available	Unit Cleared	Unit cleared from call	
08/07/2012 17:14:36	Lee, Susan S.	7A13	Available	Unit Status Change		
08/07/2012 17:15:03	Tan, Eduardo J.	7A11	Available	Unit Cleared	Unit cleared from call	
08/07/2012 17:15:03	Tan, Eduardo J.	7A11	Available	Unit Status Change		
08/07/2012 17:19:31	Tan, Eduardo J.	S17	On Scene	Unit Status Change		
	Phillips, Amber	S17	Available	Unit Cleared	Unit cleared from call	
08/07/2012 17:25:43		MH11	Available	Unit Cleared	Unit cleared from call	1000 ON/TV
08/07/2012 18:37:34 08/07/2012 19:12:05		7A13	Dispatched	Unit Status Change		1303 SIXTY SIXTH ST, Berkeley
08/07/2012 19:12:11	Lee, Susan S.	7A13	Dispatched	Disposition Added	Primary - No Paper	1303 SIXTY SIXTH ST, Berkeley
08/07/2012 19:12:11	Lee, Susan S.	7A13	Available	Unit Cleared	Unit cleared from call	
08/07/2012 19:12:11		7A13	Ayailable	Unit Status Change		



Login ID: ahawk

Print Date/Time: 03/07/2013 12:58

From CFS: To CFS:

99

99

From Date: To Date:

07/18/2012 12:15

07/18/2012 12:15

CFS Type: Agency Type: All

Layer: All

CFS Number:

99

Areas:

Αll

Call Date/Time: 07/18/2012 12:15:29

Primary Incident: 2012-00038545

Unit(s)		= W N 4	Personnel
Unit	Primary Unit	Radio Number	09996 Grant
6A13	Yes	6A13	09930 Clark
Call Log			Description
Log Date/Time	Entered By	Action	New call created. Call Type: NEW, Location: , Phone Number: , Name:
07/18/2012 12:15:29	Egbert, Neil	Call Created	
07/18/2012 12:15:30	Egbert, Neil	Person Added	Name: Location: 1303 SIXTY-SIXTH ST, Venue: Berkeley
07/18/2012 12:15:57	Egbert, Neil	Location	
07/18/2012 12:16:00	Egbert, Neil	Call Type	NewCallType: 5150, Status: In Progress, Priority: 2
07/18/2012 12:16:02	Egbert, Neil	Call Updated	Nature of Call: 10-19
07/18/2012 12:16:02	Egbert, Neil	Narrative Added	Nature Of Call: 10-19
07/18/2012 12:16:11	Egbert, Neil	Person Updated	Name: moore,xavier,, Location: <unknown></unknown>
07/18/2012 12:16:18	Egbert, Neil	Person Updated	Name: moore,xavier,, Location: <unknown>, Contact Phone: (510)654-9684</unknown>
07/18/2012 12:16:22	Egbert, Neil	Narrative Added	rp is 10-19
07/18/2012 12:16:53	Egbert, Neil	Narrative Added	wanting to file a report for someone planting portals at social security office that transport people against their will, its a form of kidnapping per rp
07/18/2012 12:16:54	Egbert, Neil	Call Ready for Dispatch	
07/18/2012 12:36:00	J	Call Timer Expired	Call Timer Expired
07/18/2012 12:44:48	Krocil, Lucie	Incident Created	Added Incident Number, ORI: CA0010300, Number: 2012-00038545
07/18/2012 12:44:48	Krocil, Lucie	Unit Status Action	Unit 6A13 Dispatched
07/18/2012 12:44:49	Krocil, Lucie	Unit Status Action	Unit 6A13 Enroute
07/18/2012 12:44:52	Grant, Jesse	Narrative Added	Dispatch received by unit 6A13
07/18/2012 12:45:11	Krocil, Lucie	Narrative Added	c4
07/18/2012 12:56:49	1	Unit Timer Expired	Unit 6A13;Enroute
07/18/2012 12:30:49	Krocil, Lucie	Unit Status Action	Unit 6A13 On Scene
		Narrative Added	rp goa
07/18/2012 13:47:15		Call Updated	Dispositions Changed
07/18/2012 14:35:16		Unit Status Action	Unit 6A13 cleared from call
07/18/2012 14:35:16		Call Cleared	
07/18/2012 14:35:16	Krocil, Lucie	Gall Glos.	



Login ID: ahawk

Print Date/Time: 03/07/2013 12:59

From CFS: To CFS:

642

642

From Date: To Date:

07/13/2012 16:26 07/13/2012 16:26 CFS Type: Agency Type: All

Layer: All

642

Areas:

ΑII

Call Date/Time: 07/13/2012 16:26:59

2012-00037661 **Primary Incident:**

Location:

Dispatch Time:

07/13/2012 21:06:24

Additni Loc Info:

CFS Number:

1303 SIXTY-SIXTH ST BERKELEY, CA 94702, Berkeley

Arrive Time:

07/13/2012 21:12:17

Common Name:

Clear Date/Time:

07/14/2012 01:53:40

Phone:

Nature Of Call:

Created By:

Frost, Monique

Call Type:

ADVICE

Report Required:

No

4

Canceled:

Fire ORI:

No

01015

Status:

COLD REPORT

Priority:

Source:

DOB

Telephone

Police ORI:

CA0010300

EMS ORI:

Person Information

Name

Address

Phone

Race

Sex

Age

SSN

Type INVOLVED Moore, Xavier

PARTY

Person

REPORTING <UNKNOWN>, ,

Created By

Frost, Monique

Frost, Monique

Frost, Monique

Frost, Monique

Lee, Susan S.

PAIGE-MOORE, ELY

Create Time

07/13/2012 16:28:32

PARTY REPORTING

Paige-Moore, Elysse

PARTY

Male

Female

Narrative, Questionnaire Responses, TDD Text

07/13/2012 16:29:34	
07/13/2012 16:30:31	
07/13/2012 16:30:34	
07/13/2012 21:06:25	
07/13/2012 22:47:47	
07/14/2012 01:40:25	
07/14/2012 01:51:27	

Narrative

RP WOULD LIKE TO SPEAK W/ BEAT OFFICER, RE: 41 YO

TRANSGENDER, SCHIZOPHRENIC SON WHO IS BEING TARGETED BY LOCAL DRUG

ADDICT WHO RP BELIEVES IS GIVING HIM CRACK

DRUG ADDICT: BFA 25-30...APPEARS TO BE PREGNANT....CURLY HAIR...COMES BY HOUSE TO SEE SON... WHICH RP DOES NOT WANT HER TO DO FOR FEAR THAT SHE

WILL ROB THEM

Nature Of Call:

RP AT HOME

Dispatch received by unit 7A13

Dispatch received by unit 7A13

Dispatch received by unit 7A13

I spoke with Elysse. Elysse told me that her son, Xavier, is a transgendered male (to female) and has been diagnosed with schizophrenia. Xavier is mentally intelligent but has an

emotional maturity of an eight year old.

07/14/2012 01:51:52 Lee, Susan S. Xavier has befriended a drug addict in the neighborhood. Elysse believes that the drug addict provides Xavier with crack. Elysse believes that the drug addict is a bad influence to Xavier and believes that the drug addict is trying to take advantage of her son. Elysse is also afraid that the drug addict will steal from them. Elysse does not want the drug addict coming to her

house or hanging out with Xavier.

Lee, Susan S. 07/14/2012 01:52:09

The ?drug addict? is described as follows: BF, 30?s, 5?5, thick build, pregnant, with jerry curled black hair down below her shoulders.

Elysse wanted to inform PD of the situation. Elysse would like the PD to talk with the drug

addict and tell her not to come around their residence and stay away from Xavier I advised Elysse to call PD if the drug addict comes to their residence. I also informed Elysse

of Berkeley Mental Health.

07/14/2012 01:52:35

07/14/2012 01:53:10



Login ID: ahawk

Print Date/Time: 03/07/2013 12:59

From CFS: To CFS:

642 642

642

From Date: To Date: 07/13/2012 16:26 07/13/2012 16:26 CFS Type: Agency Type: ΑII

Layer: All

CFS Number:

Areas: All

Call Date/Time: 07/13/2012 16:26:59

Primary Incident: 2012-00037661

Call Log			
Log Date/Time	Entered By	Action	Description
07/13/2012 16:26:59	Frost, Monique	Call Created	New call created. Call Type: NEW, Location: , Phone Number: , Name:
07/13/2012 16:26:59	Frost, Monique	Person Added	Name:
07/13/2012 16:27:05	Frost, Monique	Location	Location: 1303 SIXTY-SIXTH ST, Venue: Berkeley
07/13/2012 16:27:08	Frost, Monique	Call Type	NewCallType: ADVICE, Status: Cold Report, Priority: 4
07/13/2012 16:28:32	Frost, Monique	Narrative Added	RP WOULD LIKE TO SPEAK W/ BEAT OFFICER, RE: 41 YO TRANSGENDER, SCHIZOPHRENIC SON WHO IS BEING TARGETED BY LOCAL DRUG ADDICT WHO RP BELIEVES IS GIVING HIM CRACK
07/13/2012 16:29:34	Frost, Monique	Narrative Added	DRUG ADDICT: BFA 25-30APPEARS TO BE PREGNANTCURLY HAIRCOMES BY HOUSE TO SEE SONWHICH RP DOES NOT WANT HER TO DO FOR FEAR THAT SHE WILL ROB THEM
07/13/2012 16:29:54	Frost, Monique	Person Updated	Name: PAIGE-MOORE, ELY,, Location: <unknown></unknown>
07/13/2012 16:30:08	Frost, Monique	Person Updated	Name: PAIGE-MOORE,ELY,, Location: <unknown>, Contact Phone:</unknown>
07/13/2012 16:30:15	Frost, Monique	Call Ready for Dispatch	
07/13/2012 16:30:31	Frost, Monique	Call Updated	Nature of Call: Removed
07/13/2012 16:30:31	Frost, Monique	Narrative Added	Nature Of Call:
07/13/2012 16:30:34	Frost, Monique	Narrative Added	RP AT HOME
07/13/2012 17:57:07		Call Timer Expired	Call Timer Expired
07/13/2012 21:06:24	Netz, Erin	Incident Created	Added Incident Number, ORI: CA0010300, Number: 2012-00037661
07/13/2012 21:06:24	Netz, Erin	Unit Status Action	Unit 7A13 Dispatched
07/13/2012 21:06:25	Lee, Susan S.	Narrative Added	Dispatch received by unit 7A13
07/13/2012 21:06:38	Netz, Erin	Unit Status Action	Unit 7A13 Enroute
07/13/2012 21:12:17	Lee, Susan S.	Unit Status Action	Unit 7A13 On Scene
07/13/2012 21:47:41	Netz, Erin	Unit Status Action	Unit 7A13 rerouted to call 722
07/13/2012 22:47:46	Lyons, Celyce J.	Unit Status Action	Unit 7A13 Dispatched
07/13/2012 22:47:47	Lee, Susan S.	Narrative Added	Dispatch received by unit 7A13
07/13/2012 22:47:48	Lyons, Celyce J.	Unit Status Action	Unit 7A13 Enroute
07/13/2012 22:47:53	Lyons, Celyce J.	Unit Status Action	Unit 7A13 On Scene
07/13/2012 22:48:01	Lyons, Celyce J.	Unit Status Action	FIELD PAPER
07/13/2012 22:59:09	Lyons, Celyce J.	Unit Status Action	Unit 7A13 cleared from call
07/14/2012 01:40:24	Lee, Susan S.	Unit Status Action	Unit 7A13 Dispatched
07/14/2012 01:40:25	Lee, Susan S.	Narrative Added	Dispatch received by unit 7A13
07/14/2012 01:41:02	Lee, Susan S.	Person Added	Name: Paige-Moore, Elysse, Sex: Female, REPORTING PARTY
07/14/2012 01:41:40	Lee, Susan S	Person Added	Name: Moore, Xavier, Sex: Male, DOB:, Type: INVOLVED PARTY
07/14/2012 01:45:24		Unit Timer Expired	Unit 7A13;Dispatched
07/14/2012 01:51:27	Lee, Susan S.	Narrative Added	I spoke with Elysse. Elysse told me that her son, Xavier, is a transgendered male (to female) and has been diagnosed with schizophrenia. Xavier is mentally intelligent but has an emotional maturity



Login ID: ahawk

Print Date/Time: 03/07/2013 12:59

From CFS: To CFS: 642 642 From Date: To Date:

Areas:

07/13/2012 16:26 07/13/2012 16:26

6:26 Age

CFS Type: Agency Type:

CFS Number:

642

Call Date/Time: 07/1

07/13/2012 16:26:59

Primary Incident: 2012-00037661

ΑII

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.
 - Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.
- In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.
 - (a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.
 - (b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

- 4 <u>Lethal Force</u>: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 5 <u>Less-Than-Lethal Force</u>: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use Of Vehicles

- 13 Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- 14 Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
- 15 Except during authorized training programs, less-than-lethal **force** shall be deployed only at the direction of a sergeant or command officer, **or the Incident Commander in a crowd situation**.

^{*}Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

(c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

- 20 The following uses of force are prohibited:
 - (a) Carotid Restraint Hold: Council Resolution No. 52,605 N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
 - (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."
 - (c) <u>Deployment of less-than-lethal munitions from a shotgun is prohibited.</u>

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

- 22 When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
 - (a) If the witness employee is a <u>sworn officer</u>, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.
- 27 A supervisor shall complete a Use of Force Report in any of the above four situations.
 - (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
 - (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)
- 28 The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

Use of Force / Administrative Review

- 29 The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.
 - (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.
- 30 The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.
- 31 Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.
- All Use Of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.
- 33 Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDUCRES / DEATHS AND SERIOUS BODILY INJURY

34 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

^{*}Highlighted text is new.

DATE ISSUED: July 12, 2010

GENERAL ORDER H-6

SUBJECT: HANDCUFFING AND TEMPORARY RESTRAINT SYSTEMS

<u>PURPOSE</u>

1 - The purpose of this General Order is to provide guidelines on the use of handcuffs and other temporary restraint systems.

POLICY

2 - It shall be the policy of this Department to handcuff or otherwise effectively restrain all arrested persons (excluding infraction citations where no transport is necessary), or detainees as reasonably necessary, to protect the lives and safety of officers, the public, and the person arrested.

PROCEDURES

General

- 3 Officers shall restrain an arrested or detained person's hands behind the person's back, except as authorized in paragraph 6 of this Order.
- Temporary restraint systems shall be employed in a manner consistent with Department-approved training.
 - (a) When employed, hand or ankle cuff systems shall be double locked, if so designed.
 - (b) Officers shall not employ temporary restraint systems in a manner that results in extraordinary discomfort or would facilitate the person's opportunity to escape.
- 5 Officers shall ensure that the **restrained** person is supervised at all times.
- 6 If a person's hands cannot be restrained behind his/her back because of large body mass, physical disability, injury, or obvious state of pregnancy, without causing unnecessary pain or aggravation of the injury or disability, officers will attempt to accommodate the person's condition by using alternative means of restraint.
 - (a) Alternative means of restraint include, but are not limited to:
 - (1) Handcuffing the person with his/her hands in front of his/her body.
 - (i) If a person is handcuffed in front, the officer should use supplemental restraining devices around the person's waist to prevent him/her from striking or choking an officer or others.

^{*}Highlighted text is new.

DATE ISSUED: July 12, 2010

GENERAL ORDER H-6

should be done only if reasonably necessary.

10 - The use of handcuffs during a detention, and reason for their application, shall be documented in a police report.

References: General Orders T-2 and J-18

Training and Information Bulletins #234 and 247

Special Order #03-26, "Change in Procedures - Juvenile Handcuffing

and Juvenile Miranda Rights" (9/11/2003)

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: April 15, 2008

SUBJECT: "THE WRAP" RESTRAINT

PURPOSE

Defensive tactics techniques are employed by law enforcement to control, and if necessary immobilize, violent or potentially combative people who have been taken into custody. This training bulletin is intended to familiarize Department personnel with "The WRAP" physical restraint device and guidelines for its use.

DEVICE DESCRIPTION

The WRAP, manufactured by Safe Restraints, Inc., is designed as a temporary restraining device. Comprised of a Velcro-strapped leg panel, torso harness, ankle strap, and backside handcuff carabiner, the device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

USE OF THE WRAP

Consistent with policy detailed in General Order T-2, The WRAP may be used:

- To restrain a combative person.
- To prevent potential violent/combative behavior.
- To inhibit a violent subject's efforts to injure themselves.
- To prevent a violent subject from causing property damage.
- To facilitate safe physical transportation of violent/combative subjects.
- When conventional methods of restraint are not effective.

As with any restraint device, do not assume The WRAP is escape-proof. Once applied, THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.

A person restrained by The WRAP can be placed on their side or in a sitting position. This will increase the person's oxygen recovery rate and reduce the potential for respiratory fatigue or positional asphyxia.

DEVICE APPLICATION

Only qualified personnel who have received training in the use of The WRAP should use this restraining device. Throughout the application of the WRAP, the subject must

^{*}Entire text is revised.

TIB #247 "THE WRAP" RESTRAINT (4/15/2008)

To facilitate movement by shuffle walk:

If the subject has calmed and is amenable, an option to carrying is allowing the person to shuffle walk. Loosen the lower strap of the restraint panel (nearest the ankles) just enough to allow some leg movement below the subject's knees. Then, loosen the torso harness' tether strap to let the subject stand upright. Controlled and assisted by no less than two (2) officers, allow the subject to shuffle walk to the desired location.

Vehicle Transportation:

Use a transportation vehicle appropriate for the manner in which a person is restrained. If available and practical, use the vehicle's seat belt to limit the person's movement and reduce the risk of his/her injury. For additional relevant information and policy on prisoner transportation, refer to General Order T-2.

Prior to vehicle transportation, re-check all belts (on the device and vehicle safety restraints, if used) to ensure that they are securely fastened. Whenever possible, two officers should accomplish the transportation: one driver and one prisoner observer. Maintaining observation of the restrained prisoner serves to ensure The WRAP remains secure and increases the ability to determine if the subject exhibits any medical problem.

DEVICE REMOVAL

To remove The WRAP restraint, reverse the application procedure. Based on the prisoner's combativeness or level of aggression, officers should employ appropriate subject control techniques and tactics when removing restraint devices. Having a plan of action that every officer understands, working as a team, and taking sufficient time to implement the plan will enhance employee safety during this dangerous period of the subject's custody.

SAFETY PRECAUTIONS

Officers who use The WRAP should always be mindful of the following safety issues:

- THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.
- The WRAP is a <u>temporary restraint device</u> and is not <u>escape-proof</u>.
- The WRAP should only be used by personnel trained in its function and application.
- All device restraint straps should be checked frequently for tightness, and adjusted, as necessary, until The WRAP is removed.
- The torso harness restraint straps should never be tightened to the point they interfere with the subject's ability to breathe.
- As soon as possible after being restrained in The WRAP, a prisoner should be placed in an upright sitting position or on their side to allow for respiratory

TIB #247 "THE WRAP" RESTRAINT (4/15/2008)

necessary.) If decontamination cannot be accomplished prior to the end of the involved officer's duty shift, the bag containing equipment must be labeled as a bio-hazard and forwarded to the Patrol Division Fleet Manager for follow-up action.

To clean soiled equipment, use an approved disinfectant/decontaminant cleaner or well-diluted bleach solution (ten (10) parts water, one (1) part bleach). Again, any person handling/cleaning contaminated equipment must wear appropriate PPE. Soiled disposable towels and any equipment so contaminated that cleaning is impractical or not possible should be discarded in accordance with bio-hazard waste management procedures prescribed in the City's BBP Program/Exposure Control Plan.

The WRAP leg restraint panel is made of Texinene, a PVC-coated woven polyester fabric, and its straps are Nylon banding. According to TMI, LLC, a polyester fabric manufacturer, and available Material Safety Data Sheets for both materials, neither is reactive to, or harmed by, chlorine bleach. <u>AVOID THE USE OF HYDROGEN PEROXIDE</u>, as Texinene may be adversely effected due to chemical reaction.

CONCLUSION

The WRAP is a physical restraint device that has time and again proven its value to this department. Like any tool of our trade, training, proper use, and equipment maintenance are essential components of a successful safety system. By following the procedures and recommendations presented in this Training and Information Bulletin, this system will continue to promote both officer and prisoner safety for many years to come.

Douglas N. Hambleton Chief of Police

References: General Orders A-17, H-6, T-2 and V-4

City of Berkeley Blood-Borne Pathogens Program, Exposure Control Plan (November 2007)

DATE ISSUED: January 24, 2013

GENERAL ORDER: C-66

SUBJECT: CRISIS INTERVENTION TEAM

PURPOSE

1 The purpose of this General Order is to set forth departmental policy and procedures for the Crisis Intervention Team.

POLICY

- To maximize safety for officers, mental health consumers and the public, it is the policy of the Berkeley Police Department to utilize, whenever possible, Crisis Intervention Team Officers for specified mental health crises.
- The Department's Crisis Intervention Team (CIT) is composed of specially trained officers whose function is to respond to incidents which involve a mental health crisis, where the officer's specialized skills may be used to resolve such an incident and to provide further assistance, beyond the actual call, for the individual involved.
- 4 The CIT Program has four primary objectives:
- a) To attempt to de-escalate crisis situations.
- b) To attempt to reduce the necessity for the use of force.
- c) To attempt to reduce recidivism among mentally ill criminal offenders.
- d) In collaboration with the community mental health system, consumer advocacy groups and the courts, to continuously work toward meeting these goals.

DEFINITIONS

- 5 <u>Crisis Intervention Team (CIT):</u> A specialized team operating within the Operations Division designated to respond to calls involving persons experiencing a mental health crisis.
- 6 Crisis Intervention Team Member: A member of the department who has completed 38 hours of POST certified CIT training (i.e., crisis de-escalation, signs and symptoms of mental illness, local resources for persons in a mental health crisis) and achieved CIT certification. Participation as a team member is voluntary, and team members have received specialized and specific training in

DATE ISSUED: January 24, 2013

GENERAL ORDER: C-66

consumers/family members and members of the general public that the officer has completed CIT training.

Automatic Dispatch of CIT Personnel

13 - The Communication Center shall automatically dispatch the closest available CIT Officer(s) to the following incidents:

Calls involving actively suicidal subjects.

Calls normally dispatched as "violent 5150."

Incidents involving suspected mentally ill subjects with a weapon.

Hostage situations or barricaded subjects, until relieved or otherwise directed by the Barricaded Subject/Hostage Negotiation Team (BSHNT).

14 - The Communication Center shall advise if there are no available CIT Officers to respond.

Dispatch/Patrol Officer Unit Requests

- 15 In situations other than those specified under the guidelines established for automatic dispatch protocol, call takers, dispatchers and patrol officers can prompt, and/or request the response of CIT personnel. Situations may include:
 - a) Calls for service when it becomes known that a subject may benefit from CIT intervention.
 - b) A family disturbance call when it is determined that an individual suffers from a mental illness.
 - c) On-scene patrol officers who determine a need and requests CIT personnel to respond.

Berkeley Mental Health Mobile Crisis Team (MCT) Coordination

16- The MCT is a mobile emergency mental health service staffed by licensed mental health professionals and interns. The MCT offers crisis intervention, counseling

DATE ISSUED: January 24, 2013

GENERAL ORDER: C-66

DATE ISSUED: January 18, 2005

GENERAL ORDER P-12

SUBJECT: POLICE-INVOLVED SHOOTINGS AND FATAL OR SERIOUS

INJURY INCIDENTS

PURPOSE

1 - The purpose of this Order is to delineate the policy for investigating officer involved shootings or other incidents involving officer/employees which result in serious injury or fatalities and to thoroughly investigate all serious incidents involving multiple jurisdictions or personnel from other law enforcement agencies.

POLICY

2 - Investigation of police-involved shootings or other incidents, which result in serious injury or death, are complex and demanding. The consequences of such an incident can be profound and affect many people in the Department and the community. For these reasons, it is the policy of the Berkeley Police Department to investigate all such incidents thoroughly, fairly and in compliance with the directions of this Order.

PROCEDURES

The Berkeley Police Department will investigate all police-involved shootings or other incidents which result in serious injury or death that occur in the City of Berkeley, whether they involve Berkeley Police employees or employees of another law enforcement agency. If a serious incident takes place in two or more jurisdictions, each part of the incident will be investigated by the agency having primary jurisdiction over the geographical area in which that part occurs. The policy applies to sworn officers and non-sworn employees who are on duty, and it applies to sworn officers who are off duty but assume an onduty status to accomplish a police objective.

An "Officer Involved Shooting and Fatal/Serious Injury Incidents Checklist for Sergeants /Watch Commanders is attached at the end of this directive. The Checklist should be used to facilitate the investigation, with appropriate copies routed to the Administrative Division Captain, Division Commander(s) of the involved employee(s) and the Homicide Detail.

(a) When a police-involved shooting or other incident results in serious injury or death, a member of the Berkeley Police Department Homicide Detail shall notify the Alameda County District Attorney's on-call "Officer-Involved Shooting Team" or "Homicide Unit." These notifications may be made via the Alameda County Sheriff Department's Dispatchers.

DATE ISSUED: January 18, 2005

GENERAL ORDER P-12

- 6 An administrative investigation will be conducted concurrently with, but separate from, any criminal investigation of a police-involved shooting, serious injury incident or death conducted under this Order.
 - (a) The criminal investigation shall have priority.
- 7 The purpose of the administrative investigation conducted under this Order is to identify training deficiencies and to determine if there are any violations of policy or procedures of the Berkeley Police Department, and if so, the identity of the person(s) responsible for the violation(s).

DEFINITIONS

- 8- Serious Injury: A serious injury is an injury which if sustained could possibly result in death or permanent disability.
- 9 Types of incidents covered under this Order are defined as:
 - (a) Officer involved shootings, accidental or intentional, whether or not there is injury or death.
 - (b) Any intentional or negligent act on the part of an employee of the Berkeley Police Department while performing his/her official duties which causes the death of or serious injury to another person.
 - (1) Officer/Employee involved fatal/serious injury incidents in which a vehicle collision is the apparent cause shall be handled by the California Highway Patrol relative to the traffic/criminal investigation.
 - (2) Departmental personnel assigned to our Fatal Accident Investigation Team (FAIT) representing the Homicide Detail and Crime Scene Unit shall assist the California Highway Patrol in their investigation if requested. This includes but is not limited to duties such as assistance with evidence collection, coordinating interviews, etc.
 - (3) In situations where a vehicle collision or other vehicular movement is involved but it not the direct cause of death, or where the vehicle collision is one of a series of events resulting from a violation of law apart from the collision itself, Homicide Detail shall retain responsibility for the investigation but may obtain assistance from the California Highway Patrol for the traffic related portions of the incident.

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GENERAL ORDER P-12

case law regarding rights which are covered by the United States Constitution's 4th, 5th, 6th, and 14th Amendments.

- (a) The investigation is to be performed in a manner that both is and appears to be thorough, fair, complete, and professional and provides an investigation, which is free of conflicts of interest.
- (b) For incidents involving outside agency personnel, a representative of the agency employing the involved law enforcement personnel will be afforded the opportunity to monitor the investigation, be present during questioning regarding the incident and within a reasonable period of time, to have access to all materials and documents pertinent to, or generated throughout the investigation.
- (c) Notifications:

Upon identifying an occurrence as an officer involved shooting or other incident which results in serious injury or death, the Patrol Watch Commander or senior on-duty Sergeant shall insure the following notifications are made, except where noted:

- (1) Homicide Supervisor, or On-call Detective
- (2) Duty Command Officer
- (3) Chief of Police
- (4) Division Commander(s) of the involved personnel
- (5) Public Information Officer
- (6) Internal Affairs Investigator
- (7) Alameda County District Attorney's representative
 - (a) This contact will be made by the Homicide Detail.

SCENE PROCEDURES

15-Emergency life saving measures have the first priority.

DATE ISSUED: January 18, 2005

GENERAL ORDER P-12

- 17 If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly have the item secured or collected as follows:
 - (a) If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
 - (b) If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
 - (c) If an involved officer still has personal possession of a weapon he/she used in the incident, the supervising officers at the scene shall take steps to get the officer removed from the scene as soon as possible. The supervising officer shall promptly but discreetly obtain possession of the involved officer(s) weapons and gun belt assemblies.
 - (1) Preferably, this should be done at the **Public Safety Building** or at another location with consideration given towards being out of the view of the public and/or other officers if possible.
 - (2) Side arms shall not be removed from their holsters; obtain the entire gun belt if necessary to avoid moving the weapon from its holster.
 - (3) Unless there are mitigating circumstances, the supervising officers shall take steps to immediately give the involved officer(s) a replacement firearm and/or any other equipment, which was collected as evidence.
 - (d) In shooting cases, the supervising officer shall attempt to identify all firearms, which may have been discharged by other officers who were present at the time of the incident to ensure that all discharged firearms are identified and collected. Where a duty sidearm, which is collected, is in the personal possession of an officer it shall be immediately replaced.
 - (e) The supervising officer collecting any weapon or instrument will describe in his/her report its description, condition and the location of any trace evidence adhering to it. These observations should be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer, and the identity of the person or location from which the weapon or instrument was received shall also be recorded.

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- As soon as practical, the involved officers(s)/employee(s) shall have photographs taken of any injuries they suffered, and/or any damage to or physical evidence present on their attire.
- (b) An uninvolved officer shall remain with the involved officer(s) until they can be interviewed. The sequestering officers are present to ensure the officers have privacy and that their needs are accommodated, they should not be present during confidential (privileged) conversations.
- (c) Involved officers are to refrain from discussing the incident among themselves, with sequestering officers, or with anyone other than their representative(s) prior to the investigative interview process.
- 21 Custodial Death Scenes:

When an incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible, pending interviews by criminal investigators.

INTERVIEWING POLICE EMPLOYEES

- Under the Public Safety Officers Procedural Bill of Rights ("The Act") (Government Code Section 3300 et seq):
 - (a) The Act is applicable only to "Public Safety Officers." It is not applicable to police employees who are not peace officers.
 - (b) The Act is not applicable to interviews with Public Safety Officers who are being interviewed by other than their Employing Agency.
 - (c) The Act is not applicable to interviews with Public Safety Officers when being interviewed by other than their Employing Agency when the investigation is concerned solely and directly with "alleged criminal activities."
- If prior to or during the interrogation of a Public Safety Officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights. {Per Government Code Section 3303, (h)}.
- 24 Interviews will be conducted separately.
- 25 Interviews will normally be fully tape-recorded.

DATE ISSUED: January 18, 2005

GENERAL ORDER P-12

REVIEW PROCESS

All incidents investigated under this Order, which involve Berkeley Police 30 -Department employees, shall be reviewed by the Chief of Police and a Review Board as outlined in General Order R-3.

References:

General Orders C-15, E-3, R-3 and T-16*

Government Code Sections 3300, et seq.

Police Regulation 323

Special Order 87-56263, September 23, 1987, "Drug Testing"

CALEA Standards

Alameda County District Attorney Guidelines for Investigation of Officer

Involved Shooting Incidents

Alameda County Chiefs of Police and Sheriff's Association Policy

Statement Adopted July 1998

TER ISSUED. January 18, 2005	GENERAL ORDER P-12
ATE ISSUED: January 18, 2005 Request I.D. Technician to process the scene/Crime Scene Sergeant notified of incident	
Witness statements (witnesses may be taken to Public Sa for interviews if appropriate)	fety Building
Designate officer(s) for scene diagram	
Designate officer(s) for neighborhood check	
For officer involved shooting situations, insure two cases (the first for the event which precipitated the shooting, the shooting investigation)	
Insure proper collection of all evidence (see PSB checklist	st)
PUBLIC SAFETY BUILDING SUPPLEMEN SERGEANTS/WATCH COMM	TAL CHECKLIST FOR
Insure segregation of all involved personnel (including rediscussing incident with other employees)	efraining from
Assignment of an officer to sit with involved personnel properties of the investigation	pending
Officer involved shootings - Unless there exists mitigating circumstances, at PSB (or other appropriate site) take guassembly as evidence from officers when it has been det fired their weapons (replacement sets maintained at PSB)	ermined they
Officer involved shootings - if unclear who fired, or such is in dispute, guns/gun belts taken from all involved officers no dispute, examine weapons and magazines of officers but allow them to maintain possession	h a designation cers. If there is
Insure all seized guns/gun belts are turned over to Crime personnel for processing	
cc: Captain of Administration, Division Commander, Homicide L	Detail
	Date/Time
Completed by:	

DATE ISSUED: June 12, 2008

GENERAL ORDER R-3

SUBJECT: REVIEW BOARD PROGRAM

PURPOSE

1 - The purpose of this Order is to provide a procedure through which the Chief of Police can review an incident involving a police department employee, equipment or policy to examine relevant facts in furtherance of an administrative inquiry or action.

POLICY

- 2 A Review Board shall be convened as a fact-finding body and, unless specifically required or requested to do otherwise, shall refrain from expressing opinions or making recommendations.
- The Chief of Police has sole authority to convene a Review Board as provided by this Order.

PROCEDURES

- 4 A Review Board shall be comprised of Departmental employees of appropriate rank and seniority, as determined by the Chief of Police.
 - (a) Regarding the composition of a Board, the Chief of Police will consider the nature of the subject matter under inquiry and the relevant qualifications of the employees selected to serve as members.
- 5 The Chairperson of a Board shall be designated by the Chief of Police.
- 6 When appointed, the Chairperson of the Board shall, within seven (7) calendar days, convene the **Review** Board and conduct an investigation into the matter within its jurisdiction.
- 7 The Chairperson shall appoint a **Recorder** from the membership of the Board.
 - (a) The Recorder will be responsible for taking meeting minutes and for preparation of the final report to the Chief of Police.
- 8 Any Board member may select a qualified subject matter advisor or resource person to provide relevant information to the Board.
- 9 The Board shall avail itself of any Department facility necessary to conduct a complete examination of the circumstances subject to administrative review.

DATE ISSUED: June 12, 2008

GENERAL ORDER R-3

"Accidental."

- 16 The Complaint Board of Review shall be responsible for examination of Internal Affairs Bureau investigations of external personnel complaints and, if directed by the Chief of Police, policy complaints, as set forth in General Order P-26.
 - (a) After evaluating all information, the Complaint Board of Review will reach a majority decision and present a recommendation for complaint disposition as described in General Order P-26.

FINAL REPORT TO CHIEF OF POLICE

- 17 Unless otherwise directed by policy or the Chief of Police, the Chairperson shall submit a final report of the Board's examination and any other related reports within ten (10) business days following the end of the hearing to the Chief of Police.
 - (a) The final report shall contain the findings of the Board and the concurring or non-concurring signatures of <u>all</u> its members.
 - (1) Dissenting members of a Board may submit a minority report which shall be included with the final report.
 - (2) The final report shall contain the findings and, when so directed, recommendations of the Board.
 - (3) Upon approval of the final report by the **Chief of Police**, the Board shall be deactivated.
 - (b) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.
 - 18 All information associated with Board of Review proceedings shall be deemed confidential, and the final report package shall be administered in accordance with established personnel record management procedures.

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GENERAL JURISDICTION DIVISION

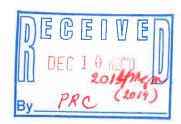
1515 Clay Street , Suite 206, Oakland CA 94612 (510) 622-2722 phone / (916) 376-6323 fax www.dgs.ca.gov/OAH

Department of General Services

Governor Edmund G. Brown Jr.

December 04, 2014

Sgt. A. Hawk Internal Affairs Bureau Berkeley Police Department 2100 Martin Luther King Jr. Way Berkeley, CA 94704



Subject:

Brown, Gwendolyn (Berkeley PRC)

OAH No. 2014060886 Agency No. PRC #2327

Enclosed	are	the	foll	owing:
LIICIOSCU	arc	u	TOIL	OWILLE.

		The original Proposed Decision
		An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
	\boxtimes	The original Decision
		Exhibits numbered: $1-x$ Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.
		Email copy of the Proposed Decision to:
		The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits $1-x$ to you.
НТ		
Encl.		M M
Transm	ittal Form	

Regional Offices

Los Angeles 320 West Fourth Street Suite 630 Los Angeles, CA 90013 (213) 576-7200 (916) 376-6324 fax

OAH 60 (Rev. 04/09)

Sacramento 2349 Gateway Oak Drive Suite 6200 Sacramento, CA 95833

(916) 263-0550/(916) 263-0880 (916) 376-6349/(916) 376-6319 fax

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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA

In the Matter of the Appeal of the Berkeley Police Review Commission's Sustained Findings of Misconduct Against:

POLICE OFFICER GWENDOLYN Y. BROWN,

Appellant.

Police Review Commission Case No. 2327

OAH No. 2014060886

DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings (OAH), State of California, heard this matter on September 25, 2014, in Berkeley, California.

City of Berkeley Police Review Commission Officer Katherine J. Lee appeared on behalf of the Berkeley Police Review Commission.

Attorney at Law Jonathan R. Murphy of Rains Lucia Stern, PC, 2300 Contra Costa Boulevard, Suite 500, Pleasant Hill, California 94523, represented appellant Police Officer Gwendolyn Y. Brown, who was not present for the proceeding.

The record was left open to afford opportunities to the parties to file comprehensive written summaries of the extensive oral arguments as made during the proceeding on September 25, 2014. On October 14, 2014, appellant Police Officer Gwendolyn Y. Brown (appellant) filed with OAH her "Summary of Argument," dated October 10, 2014, which was marked as exhibit "F." On October 20, 2014, the Berkeley Police Review Commission filed with OAH its "Opposition to Appeal of [Police Officer] Gwendolyn Brown," which was marked as exhibit "5." And, on October 22, 2014, appellant filed with OAH a document titled "Gwendolyn Brown's Response to Police Review Commission's Objection to Appellant's Summary of Argument," dated October 20, 2014, which was marked as exhibit "G."

On October 22, 2014, the parties were deemed to have submitted the matter for decision and the record closed.

Procedural Background

On February 20, 2014, a Berkeley Police Review Commission Board of Inquiry (PRC board or the board of inquiry) concluded its administrative adjudication proceeding regarding a complaint, which was brought to hearing under PRC Regulations section II (Initiating the Process), division A., paragraph 3 (Unavailability of Complainant). The complaint pertained to the alleged acts or omissions of six police officers on the night of February 12 /13, 2013, at or near the time of the death of person, who was subject either to an arrest based on an outstanding warrant or to detention due to manifestation of a psychiatric malady that indicated the person was a danger to himself or others. The PRC had issued PRC Complaint No. 2347 on March 27, 2013. And, on January 30, 2014, the board of inquiry's "hearing packet" had been dispatched to the PRC's eight commissioners; however, only six commissioners participated in the administrative adjudication proceeding that resulted in the board of inquiry's factual findings and decision.

Of the five allegations² in the complaint, the PRC board of inquiry considered four charges wherein appellant was named as a "subject officer."

The PRC board of inquiry reviewed the investigation report and heard the testimony from nine witnesses, including the six subject police officers as well as the police

¹ PRC Regulations, section II, division A, paragraph 3, provides, "If there is no complainant able to initiate a complaint, and in any case where a sworn officer . . . is involved in a death, [five] Commissioners may vote to authorize an investigation or take such other action they deem appropriate."

The five allegations in the complaint before the PRC board of inquiry are summarized as: 1.) Against appellant only under a charge that she exhibited improper police conduct because appellant allegedly did not follow proper police procedure by failing to summon the Crisis Intervention Team when interacting with the decedent arrestee/detainee who was afflicted with hallucinations and delusion due to the diagnosed mental illness of paranoid schizophrenia as well as the decedent arrestee/detainee appearing to be markedly intoxicated by the ingestion on controlled substances; 2.) Against two police officers, but not appellant, for improper use of force in applying "ankle straps" from a restraining device called a "Wrap" onto the decedent arrestee/detainee without proper justification; 3.) Against six named police officers, including appellant, as well as "unknown officers," for exercise of the improper use of force (or improper physical contact) by way of applying physical force to the wrists, arms, ankles and body of the decedent arrestee/detainee; 4.) Against six named police officers, including appellant, as well as "unknown officers," for exercise of improper police procedure because of violation of Training and Information Bulletin No. 234 regarding sudden in-custody death in the instance of a breach of the directive "placing restrained persons in a face-down prone position for long periods of time, should be avoided"; 5.) Against appellant only for lack of sufficient knowledge to effectuate a valid arrest of the decedent arrestee/detainee.

department's duty command officer for the Professional Standards Division, Captain Cynthia Harris. Also, the witnesses to the hearing included the two police supervisors, namely Police Sergeants Amber Philips and Benjamin Cardoza, who were present at the scene of the incident involving the death of the decedent arrestee/detainee at or about the time for the decedent's cessation of breathing; but, those supervising sergeants were not named as potentially culpable subject police officers under any allegation in the complaint.

As to the other subject police officers, the PRC board of inquiry concluded that the evidence through the proceeding required determinations as to the allegations in the complaint to be characterized as either "unfounded" or "not sustained" relative to four of the six subject police officers. The board concluded as to a fifth police officer that under Allegation No. 4 that there was a lack of a majority of the board's voting members to make "findings" because there were four votes to sustain the charge, but two votes were entered as "not sustained" regarding PRC Complaint Allegation No. 4 against the other police officer. (Five votes were needed to reach a majority determination to sustain an allegation. Although the record is not clear, the board of inquiry's action as to that fifth police officer appears to suggest the dismissal of the charge under Allegation No. 4 as to that fifth police officer.) Also, as to that fifth officer the board of inquiry voted either to conclude not sustained or unfounded where he was named in other complaint's allegations.

The PRC board of inquiry determined that appellant was "exonerated" with regard to Allegation No. 1 in the complaint. The other allegations, whereby she was a named subject officer, were either deemed unfounded or not sustained.

By a vote of 6-0, the PRC sustained only one allegation against appellant. That allegation arose out of a charge that appellant had violated Berkeley Police Department Training and Information Bulletin No. 234, which pertains to the sudden in-custody death of a detainee or an arrestee. In particular, appellant was determined to have effected an act or omission contrary to the bulletin's proscription against "placing restrained persons in a facedown prone position for long periods of time, [which] should be avoided" The bulletin goes on to instruct that a police office must "never leave a restrained person in a face down

³ Under PRC regulations, the conclusions by the board of inquiry are defined as follows: The term "exonerated" means the alleged act did occur, but police officer's act was lawful, justified and proper.

The phrase "not sustained" means that the evidence fails to support the allegation; however, the police officers' act or omission had not been proven false.

The word "unfounded" means that the alleged act did not occur.

The term "sustained" means that the allegation did occur and the action was not justified.

prone position without constantly monitoring his/her vital signs." (Allegation No. 4)⁴ Appellant appeals the single sustained finding, and resultant PRC determination of misconduct on her part.

Police Officer Gwendolyn Y. Brown challenges the sufficiency of the proof in supporting the PRC's determination that the evidence assembled through the PRC board of inquiry proceeding was sufficient to sustain the charge set out under the PRC Complaint's Allegation No. 4.

Standard of Review

Under the PRC's regulations, no complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. (PRC Regs, § III, ¶ 19.) The same paragraph defines "clear and convincing" evidence as "more than a preponderance of the evidence, but less than beyond a reasonable doubt."

On appeal, the PRC bears the burden of establishing that its decision is correct. The administrative law judge reviews the administrative record and conducts an independent examination of the evidence that was before the PRC to determine the appropriate disposition for any allegation of misconduct. (PRC Appeal Procedures, ¶ I.)

FACTUAL FINDINGS

- 1. On the night of February 12, 2013, shortly before midnight, Officer Brown as well as two other Berkeley Police Department police officers, namely Police Officer Kenneth Tu (Officer Tu) and Police Officer Brandon Smith (Officer Smith), responded to a 911 emergency call made by a Mr. Hayes (or reporting party) that he had been the target of threats from his roommate, who had forced Mr. Hayes to leave a fifth-floor apartment unit within an apartment building on Allison Way in Berkeley, California.
- 2. Each officer arrived at the site of the seven-story apartment building by way of three separate police patrol vehicles. Because the apartment building's location fell within her specific patrol area, appellant, a 22-year veteran⁵ of the Berkeley Police Department, was designated the case, or lead, officer. For the subject police response effort, Officer Smith

⁴ Also named as subject officers under PRC Complaint Allegation No. 4 were: Police Officers Tu, Smith, Gardner, Mathis and Kastmiler. (The two police sergeants present at the time the decedent detainee/arrestee was finally restrained were not named as subjects under any portion of the PRC Complaint.)

⁵ Before joining the Berkeley Police Department, appellant served two years with the City of Richmond Police Department. And as a Berkeley Police Department officer, appellant has a record of spending three to four years as a Defense Tactics instructor.

was characterized as the "cover" officer. And Officer Tu was viewed as having attached himself to the police response to the 911 emergency call by Mr. Hayes.

- Officer Tu and appellant reached the scene nearly simultaneously. They conferred and attempted access to the apartment building, which was locked. And although the dispatcher had conveyed to the police officers that Mr. Hayes would be standing near the building's entrance, he was not initially observed by appellant. Officer Smith then arrived where appellant and Officer Tu waited on the sidewalk. Officer Smith relayed to appellant and Officer Tu that within the time and space of a block prior to reaching the apartment building, he had received information on his police vehicle's computer specifying that the person named in the 911 emergency call as the incident's reported aggressor, that is Xavier Moore, was named in an arrest warrant issued in San Francisco. Appellant replied that she had recently encountered the name of "Xavier Moore" (Moore)6 about a month earlier due to the individual's mother's request for a welfare check on Moore. Appellant had learned on the earlier date that Moore had been described as a mental health patient who chronically abused drugs and who was contemplating a gender change surgical procedure. And appellant recalled that the mother had reported that Moore had recently moved from San Francisco because, among other things, the Berkeley city police officers were more tolerant compared to law enforcement personnel Moore had encountered with the San Francisco Police Department actions, which that he had not favorably appreciated.
- After the passages of a very few minutes following the police officer's arrival 4. at the sidewalk outside the apartment building, Mr. Hayes approached them. Upon appellant encountering Mr. Hayes, the emotionally upset reporting party stated that his roommate had forced him out of an apartment that was shared between the two persons. Mr. Hayes repeated to the three police officers, including appellant, the essence of his 911 recorded message, that is: his roommate was afflicted with schizophrenia, yet he was "off medications"; that his roommate had been consuming drugs or alcoholic beverages for a good part of the day; and, that there were no firearms possessed by the roommate, but the apartment contained knives, which had been brandished on occasions by the roommate when he had been angry. The reporting party, who had been threatened with attack by the roommate, stated that the roommate had become very angry so as to force Mr. Hayes to flee from the apartment when Mr. Hayes told the roommate that he had no money that night for the roommate to purchase additional drugs or alcoholic beverages to consume. Mr. Hayes voiced a concern that his roommate might be subject to again be taken into custody by way of a "5150" protective seizure by the police officers. (The record shows that subsequent

⁶ Xavier Christopher Moore is described in the Autopsy Protocol Memorandum, dated February 13, 2013, by Thomas R. Beaver, M.D., in no less than two places, as a "41-year-old morbidly obese male." And the Berkeley Police Department reports note Moore as being a male. Hence, for this Decision male pronouns and "Mr." are used to identify the deceased detainee/arrestee.

Welfare and Institutions Code section 5150 sets forth provides, in pertinent part:

law enforcement agency investigations established that Moore had been involuntarily held under "5150" on several earlier occasions, including a detention earlier during the year at the John George Psychiatric Center for Alameda County.)

All four individuals, that is Mr. Hayes and the three police officers, took the elevator to the apartment building's fifth floor, where apartment units encircle an open-air courtyard. (A fence, at the inner edge of the walkway around the perimeter of the building and in front of the apartments, protects persons from falling several stories to the courtyard's surface.)

Mr. Hayes used a key to unlock the apartment unit's door and he opened the door in order to facilitate the interaction between the police officers and Moore. Without entering the apartment's enclosure, appellant called out for "Xavier."

6. An individual, that is Moore, appeared at the door dressed in a woman's halter top as well as a vividly-colored skirt and adorned with an expansive hairstyle. Officer Tu, Officer Smith and appellant observed that the person standing at the door and responding to the name "Xavier" appeared to weigh between 350 pounds and 400 pounds and to stand just under six-foot tall.

To the questions posed to Moore by appellant regarding the dispute between the roommates and "what was going on," Moore was non-responsive. All three officers observed Moore to exhibit bizarre behaviors and to utter comments inappropriate for the circumstances so as to indicate that Moore's thought processes were markedly impaired. Moore first voiced concerns that the FBI had been following him. Then, Moore asserted that the three uniformed police officers were not actually police so that the FBI had to be called to verify their identities. Also, Moore addressed appellant by three different first names,

When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer... upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services.

Welfare and Institutions Code section 5278 grants immunity from civil suit liability or criminal prosecution to those persons authorized, such as police officers, to detain a person for a 72-hour psychiatric hold.

People v. Triplett (1983) 144 Cal.App.3d 287, 288, notes that "a peace officer . . . is not required to make a medical diagnosis of mental disorder. It is sufficient if the officer . . . can articulate behavioral symptoms of mental disorder, either temporary or prolonged. . . . [M]ental disorder might be exhibited if . . . a person's thought processes, as evidenced by words or actions or emotional affect are bizarre or inappropriate for the circumstances." (cf. Bias v. Moynihan [City of San Leandro] (2007) 508 F.3d 1212, 1220.)

including "Carol" and "Wanda"; and, when appellant responded that none of those names belonged to her, Moore asserted, "Oh, I see them behind you." Also, Moore digressed into talking about dinosaurs. And, Moore referred to Mr. Hayes only as "Crunchy." Appellant consistently sought to keep Moore on point in the dialogue regarding the questions of the police officers as to the need for Moore to address the reported threats made against Mr. Hayes as recorded in the 911 emergency call for police intervention in a dispute between cohabitants of a dwelling; but, Moore engaged in nonsensical comments and made extraneous motions and gestures of a "theatrical" nature. The officers saw Moore's erratically movements and exhibited actions suggestive of a mentally impaired person.

- During the initial interaction between appellant and Moore, Officer Smith 7. made a radio inquiry regarding both Mr. Hayes and "Xavier Moore." Information was returned to Officer Smith that an outstanding warrant existed in the name of Mr. Hayes. Officer Smith wrote on the back of a paper the fact of the warrant for Mr. Hayes, handed the paper to appellant and when he confirmed on a second occasion the existence of the warrant, appellant directed Officer Smith to arrest Mr. Hayes. Mr. Hayes walked with the arresting officer away from the apartment to leave the building. Outside the building, Mr. Hayes was handcuffed for placement into the patrol car's "caged" compartment. (Officer Smith had discerned through a second viewing of his patrol car's computer that the arrest warrant for "Xavier Moore" was issued for a person born in 1952, which would have made the suspect 61 years old; but, the person standing at the apartment 's threshold had an age of approximately 42 years of age. Officer Smith did not, however, clearly or explicitly impart to either appellant or Officer Tu, the cover police officer's assessment that the person at the apartment building probably was not the subject of the outstanding warrant issued in San Francisco.)
- 8. After Officer Smith departed from the apartment's threshold with the arrested Mr. Hayes, appellant and Officer Tu continued to interact with Moore. In that Officer Smith had not pointedly assert his deductive conclusion that Moore was not the subject of an arrest warrant, and based upon her good faith belief, appellant had a reasonably grounded understanding that Moore was the subject of an arrest warrant for which an arrest of the individual was justified.
- 9. Despite appellant's best efforts to gather reasonable responses from Moore, that person continued to act as though he was gravely under the influence of intoxicating substances or seriously impaired by a psychiatric disorder. And, Moore never subsided the display of having a significant loose touch with reality. Moore evidenced being impacted by false beliefs that manifested as delusions and hallucinations that gravely impaired Moore's perceptions, verbalizations and behaviors.

Based upon Moore's unsettling behavior along with the detailed account given by the upset roommate, Mr. Hayes, about Moore's threat made against him, Officer Brown reasonably formed an impression that Moore might be a person whose best interest would be served by a "5150" assessment through an involuntary detention. And, based upon the arrest

warrant for the arrest of "Xavier Moore," Officer Brown held a reasonable and good faith belief that the individual, who stood at the apartment's threshold, should be arrested.

- Officer Tu grasped the left wrist, Moore reacted so violently that both Officer Brown and Officer Tu were compelled to bring Moore under control. With tremendous strength, Moore reacted by pulling both officers through the apartment's entry way, along the length of a hallway and into the apartment's living room area. Because a futon-like mattress was positioned on the floor in the living room, all three persons stumbled and loss their balance. With Moore in the center of the group of three persons, they landed on a mattress with Officer Tu closest to a wall grasping Moore's wrist, and appellant was thrown over Moore's right shoulder with her attempting to hold onto Moore's other wrist. Moore actually landed onto his left side with his left arm underneath the bulk of his large body. (During the initial moments of a tremendous struggle with Moore, appellant observed an individual named "Mr. Sterling" seated on a living room chair. That person immediately complied with the order, as voiced by appellant, that he exit the apartment.)
- 11. Within a short span of time, Officer Tu was able to grasp Moore's right wrist. Then Officer Tu and appellant were able to place a handcuff onto Moore's right wrist. Officer Tu, who stands 6-foot, 3-inch tall and weights 225 pounds, attempted to position his lower body across the upper legs of Moore to limit the arrestee/detainee from standing. At times Moore partially raised his torso off the mattress onto his hands and knees. Yet he went down onto his left side again. As Moore's violent struggle progressed and the handcuff could not be fitted onto the left wrist, appellant used her radio to make a general distress broadcast for other police officers to rush to the scene.
- 12. When appellant made her distress broadcast for other officers to come to the altercation with Moore, Officer Smith was positioned near his parked patrol vehicle. Officer Smith locked Mr. Hayes within the patrol car, and he returned to the apartment building. Upon reaching the subject apartment, Officer Smith observed that appellant and Officer Tu were not prevailing in the effort to physically restrain Moore, who screamed, kicked, vigorously squirmed around and bucked upon the mattress. (Officer Tu later acknowledged his conclusion that due to his near state of exhaustion and Moore's extraordinary display of strength and fighting spirit that the two police officers would not be able to subdue Moore by use of hand-to-hand combat alone.) At the point of Officer Smith's arrival, Moore had rolled to his side so as to pin his left arm under the bulk and weight of his body. In order to properly apply the handcuffs, Officer Smith joined appellant's efforts to lift Moore's left arm that was being held beneath the torso of the arrestee/detainee. Even with Officer Smith joining the first two officer engaged in the effort to restrain Moore, the fight ensued and did not abate from a furious level.
- 13. Police Officers Timothy Gardner, Brian Mathis and Nikos Kastmiler drove to the scene, rode the elevator together and joined the fray in an effort to control Moore. Before entering the apartment, those three newly arrived police officers perceived that Moore was violently resisting by his bucking, writhing, and threshing against appellant and Officers Tu

and Smith. Police Officers Gardner, Mathis and Kastmiler noted that even though Officer Tu was partially straddling Moore's legs and buttocks, that the 225 pound police officer was being tossed physically to and fro and propelled into the air by Moore's great display of strength and physical power. And Officer Smith, who weighed 235 pounds, and appellant together were arduously working to take Moore's left arm to the arrestee's back to close the handcuffs.

Officer Kastmiler joined in the efforts to control Moore's left arm so as to assure the locking of the handcuffs. Officers Mathis and Kastmiler focused upon attempts to control Moore's kicking, flailing and thrashing legs.

During the fight, Officer Kastmiler noted that appellant exerted such tremendous strength that the detainee/arrestee was raising himself off the mattress with his arms and knees. Hence, Moore was not being pressed downward onto the mattress during the early phase of the fight that involved six police officers attempting to subdue the enraged person.

- 14. Upon the arrival of police officers Gardner, Mathis and Kastmiler and following the assurance of the successful application of handcuffs to Moore, Officer Smith left the apartment with an explanation that he had locked an arrestee, namely Mr. Hayes, in his patrol vehicle who had to be transported to the police station. Yet, as Officer Smith exited the scene of the fight, Moore continued to violently struggle, resist, yell, scream and otherwise fight the remaining five police officers.
- 15. After Officer Smith's departure from the apartment, and as Moore continued to violently struggle with five police officers, Police Sergeants Amber Philips and Benjamin Cardoza came to the threshold of the apartment to see the detainee/arrestee's ongoing violent resistance with Moore kicking and trashing his legs against the police officers. Into the apartment, Sergeant Cardoza carried a device called a Wrap, which is a law enforcement tool that can be used to restrain a violently resisting or irrational person.
- 16. The two police sergeants could see that Officer Mathis, who is a large man as he weights 245 pounds and stands 6-foot, three-inch tall, was being both bucked and thrown into the air by Moore's strenuous and violent movements. And, the sergeants recognized that Officer Mathis along with Officer Gardner, who weighed 195 pounds, was not wholly successful in lessening Moore's kicking and flailing of his legs. Officer Mathis called for the Wrap, which was taken from a carrying case by Sergeant Cardoza. Sergeant Philips took from Sergeant Cardoza the ankle strap portion of the Wrap, and she handed that object to Officer Mathis, who along with Officer Gardener finally secured the ankle strap to bind Moore's legs together. (The sergeants determined that the bulk of Moore's body would not permit the use of the entire Wrap device, which is intended to enclose an arrestee's body so that three or more police office can carry the detainee/arrestee to a transport vehicle.) Briefly after the placement of the ankle scrap, the sergeants noted that Moore persisted with his violent resistance; but, within a brief span of time, the sergeants saw that Moore ended his violent struggle.

- After the ankle strap was placed around Moore's legs, appellant, who was position near Moore's head and shoulder, heard Moore say, "okay, okay." And appellant perceived that the arrestee/detainee had ended the violent resistance to the efforts of the police officers in performing the official duties.
- 18. From the moment that Moore landed upon the futon mattress with appellant and Officer Tu attempting to control him, to the point of four other officers joining in the challenge of restraining the arrestee, Moore writhe to and fro. At moments during the struggle, Moore moved upon his stomach and at times he leaned more onto his left side, but he did move at time onto his right side. He yelled, screamed and cursed, which connotes the intake of air. No evidence supports a finding that the arrestee/detainee, during his struggle and the police officers' efforts to restrain him, was Moore ever "face-down," so that his nose and mouth passages were obstructed. At no time did any of the police officers, who had been physically involved in the effort to control Moore's oppositional behavior, place a knee, foot or substantial body weight directly onto Moore's back or upper torso regions.
- 19. After the ankle strap was affixed and upon hearing one of the law enforcement officers called out for a "spit mask," Officer Mathis moved away from the quieting Moore, and that police officer left the apartment to retrieve the mask from a duty bag located in his parked patrol vehicle. Therefore, four police officers and two sergeants remained in the apartment along with Moore after Officer Mathis exited the apartment unit.
- 20. At the moment that the ankle strap was applied, Officer Kastmiler, who was involved with the fixing of the device, recalled Moore to be at least partially positioned onto his side.
- 21. Within a brief span of time after securing the ankle strap and Moore's cessation of the violent outbursts and struggles, which spanned approximately one minute, police officers, including two police sergeants, rolled Moore onto his side so that he was leaning onto his left side upon the entire mattress and facing towards a wall.
- 22. Following the end of his violent resistance, Moore lay on his stomach with his face positioned to the left side for a period that spanned approximately one minute to two minutes. Such period of time, which spanned no more that 120 seconds, whereby Moore lay on his stomach without resisting and fighting, cannot be deemed to be "long periods of time" as used in Training and Information Bulletin No. 234.
- 23. After Moore quieted and was positioned so that the arrestee/detainee was reclining onto his left side, facing a wall, and apparently breathing within expected limits, and because Officer Tu had reached the point of complete exhaustion, Sergeant Philips instructed Officer Tu to "get air" at the balcony outside the apartment. Also, Officer Kastmiler exited the confines of the apartment for respite to overcome his near fully-taxed condition.

- 24. Upon observing that Moore was nude as the arrestee/detainee lay on his side upon the mattress, Sergeant Amber Philips directed that a blanket be draped over Moore's lower body. (The skirt worn by Moore had fallen away to expose the individual's lower body, which had not been clothed with underwear.) At that moment of having a blanket placed upon the torso of the supine Moore, appellant was positioned in the area of Moore's head and shoulder, and Sergeant Philips observed Moore's breathing. Also, before Moore displayed a problem with breathing, Sergeant Philips perceived that appellant engaged in monitoring Moore after the detainee/arrestee became compliant with the officers' directions to cease fighting and when Moore was rolled onto his side.
- 25. And as appellant remained positioned close to Moore's upper body, Officer Mathis rested his hand onto Moore's lower extremity or back in the event that the arrestee again erupted into a fit of rage to resume his fight. At that point in time, Officer Mathis could discern Moore was breathing as he lay onto his side.
- 26. Sergeant Philips did not recognize the identity of Moore, upon first seeing the very large body of the person violently resisting five police officers. In particular the vast amount of hair that covered the arrestee/detainee's face and with an exposed nude back region along with violently moving bodies dominating the scene, Sergeant Philips could not see the face of the person who so violently fought with the police officers. But, when the fighting stopped and Moore was rolled onto his left side to face the wall, Sergeant Philips pried over the supine torso to see the detainee/arrestee's face and the police sergeant recalled having interacted with Moore on an earlier date. And, when she looked down upon Moore as he was positioned upon his side, Sergeant Philips perceived that Moore was inhaling and exhaling.
- 27. Having assessed that the Wrap could not be deployed to function as a carrying device for the 350-pound person, and concluding that Moore would not willingly walk from the apartment, Sergeant Philips used her radio to call the police dispatcher to summon a Fire Department vehicle that included a gurney. The sergeant, as well as other police officers, knew that a wheel-based gurney was the best means to transport a very large person to an ambulance-type vehicle, which was also sought by Sergeant Phillips at the time of her first broadcast regarding the means to remove from the apartment the then apparently uninjured arrestee/detainee.
- 28. So as to escort the Fire Department personnel to the correct apartment, Sergeant Cardoza exited the apartment and that senior law enforcement supervisor went alone by elevator onto the street. And as he exited the apartment, that senior supervising sergeant had no concern that Moore, who lay on his side, had any form of physical distress or injury when he left four front-line police officers and one other sergeant in the immediate vicinity of the breathing Moore. Sergeant Cardoza was standing outside the apartment building's structure at the sidewalk, when a Berkeley Fire Department apparatus reached the building.

- 29. Before the most senior supervising police sergeant present at the scene, namely Sergeant Cardoza, left the apartment unit after Moore had been restrained with handcuffs and an ankle strap, neither Sergeant Cardoza nor Sergeant Philips criticized the police officers, including appellant, who participated in restraining Moore and placing him on his side to wait for transportation to take the detainee/arrestee to the police station.
- 30. As appellant continued to observe Moore as he lay on his side, Sergeant Philips again scrutinized Moore and the police sergeant detected that Moore seemed to take in gulps of air. At that point in time, Sergeant Philips immediately used her radio for a second time to call the police dispatcher to alter the police sergeant's initial message that the Fire Department send not only a gurney, but also that paramedics come to the scene because Moore's seemed to exhibit difficulty with breathing.
- 31. Within a short span of time of the second broadcast by Sergeant Phillips for the Fire Department to proceed to the scene, appellant noticed that Moore seemed to cease breathing. Appellant felt for a pulse at the carotid artery in Moore's neck, but she could detect no pulse. Almost simultaneously, both appellant and Sergeant Philips each voiced the alert that Moore was not breathing. Sergeant Philips made a third radio broadcast for paramedics and she announced that CPR had been started for Moore
- 32. Upon appellant and Sergeant Philips sounded the alarm that Moore was not breathing, the police officers standing outside the apartment rushed back into the apartment. Moore was rolled fully onto his back and the handcuffs as well as ankle scrap were taken off. Officer Tu began vigorous chest compressions as a CPR technique in an effort to revive Moore. As Officer Tu engaged in CPR, Officer Kastmiler held Moore arm as a precaution against a revived arrestee punching Officer Tu.
- 33. At approximately 12:40 a.m., Berkeley Fire Department paramedics reached the scene, took measures to resuscitate Moore. The fire department's vehicle transported Moore to Alta Bates Hospital.
- 34. At 1:34 a.m. on February 13, 2013, Moore was pronounced dead at Alta Bates Hospital.
- 35. Although Berkeley Police Department Duty Command Captain Cynthia Harris was present at the PRC Board of Inquiry proceeding to address policy directives and procedures, no member of PRC asked Captain Harris to express an expert witness opinion regarding whether a "case" or lead front-line police officer, similarly situated as appellant, where two police sergeants were present to monitor the restraint of a violently resisting detainee/arrestee, must be held to a greater duty, in contrast to the other police officers and police sergeant present, to "constantly monitor" the vital signs of the detainee/arrestee upon that person being been brought under control by police officers, or to be responsible in a greater sense to all other police officers to cause Moore to be rolled from his stomach to his side or to a sitting position.

36. The PRC's decision, which determined appellant's violation of police practices and procedure, springs from fallacious inferences that are grounded in ill-defined nuance and unconvincing subtlety in the interpretation of various police officers' accounts of the effects of a violent altercation with a mentally-ill, drug-impaired very large and angry man where the fight spanned a very brief period of time. And, the PRC's decision defies common knowledge regarding the frailties of "memory" in condemning appellant for her account at the PRC proceeding, which occurred several months after the instance involving Mr. Xavier Moore. The PRC's findings, conclusions or determinations, which include adverse notions regarding appellant's reliability as a credible witness at the PRC proceeding, are not supported by the clear and convincing evidence.

DISCUSSION

Restatement of Allegation No. 4

1. The PRC's "Findings Report" for Complaint No. 2327 sets out the complaint's Allegation No. 4 as:

Whether, during the process of physically taking Moore into custody, the subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: 'Placing restrained persons in a face-down prone position for

We are accustomed to speak of memory as if it consisted in an exact reproduction of past states of consciousness, yet experience is continually showing us that this reproduction if very often inexact, through the modifications which the 'trace' has undergone in the interval. Sometimes the trace has been partially obliterated; and what remains may serve to give a very erroneous (because imperfect) view of the occurrence This is continually demonstrated by the entire dissimilarity of the accounts of the same occurrence or conversation which is often given by two or more parties concerned in it, even when the matter is fresh in their minds, and they are honestly desirous of telling the truth. This diversity will usually become still more pronounced with the lapse of time, the trace becoming gradually but unconsciously modified by the habitual course of thought and feeling, so that when it is so acted upon after a lengthened interval as to bring up a reminiscence of the original occurrence, that reminiscence really represents, not the original occurrence, but the modified trace of it. (Wellman, The Art of Cross-Examination, (1904) pp. 143-144.)

⁸ More than 110 years ago, a learned practitioner in trial practice expressed:

long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs.'

Rationale or Determination by PRC in Sustaining Allegation No. 4 Against Officer Brown, Only

2. The PRC's Finding Report provides a flawed, vague and legally insufficient rationale or determination to sustain the allegation against Officer Brown, only. The report sets out:

Training and Information Bulletin 234 provides direction to Berkeley Police Officers on how to avoid positional asphyxia. The bulletin states . . . '[i]ndividuals that are obese and/or have large bellies are high-risk candidates for sudden death due to positional asphyxia.' The [PRC] found that the most credible testimony established that . . . Moore was prone (on [his] stomach) for most of the time that [he] was resisting, and that after [he] ceased resisting, with [his] hands cuffed behind [his back] and [his] ankles in restraints, there was a period of minutes when [he] remained on [his] stomach and was not turned [onto his] side.

The [PRC] did not give great weight to the testimony of Ofc. Brown, finding that her recollections were inconsistent in substantial part with the record and the recollections of other [police officers], and that particular misrecollections by Ofc. Brown called into question her overall reliability of her memory of the events.

As the lead officer, Ofc. Brown had the primary duty to follow the training and information bulletin, and she should have made certain that the period of time that . . . Moore was prone on [his] stomach was not extended any longer than was absolutely necessary. Also, Ofc. Brown should have constantly monitored . . . Moore's vital signs. The [PRC] found Ofc. Brown did not follow the [T]raining and [I]nformation Bulletin because she failed to turn (or to have other officers help her turn) . . . Moore to [his] side as soon as practicable after [he] ceased resisting, and because she failed to constantly monitor [the arrestee/detainee's] vital signs.

(Emphasis added.)

Facts Ignored, or Markedly Misconstrued, by the PRC Board of Inquiry

3. Throughout the proceeding, commissioners on the board of inquiry engaged in ill-crafted questioning regarding the notion of "positional asphyxia" as a factor in the death of Moore. Such questions sought to inculpate the officers, including appellant, with incompetent or gross neglect in positioning Moore in a "face-down or prone" position for too long a period of time. The officers acquitted themselves well by asserting their respective well-ground respective appreciation of the Berkeley Police Department training and information bulletin for the avoidance of a keeping a detainee/arrestee, over a long span of time, lying prone upon his stomach and chest.

All of the police officers, including appellant, established during most of the time of the altercation, Moore thrashed, writhed, flailed and tossed around. Even after the handcuffs were applied, the detainee/arrestee kicked raised his lower body/legs and yelled so as to intake air. After the affixed ankle strap stopped his kicking, the police officers rolled Moore onto his side. Approximately 120 seconds, and not a long period of time, had elapsed while Moore lay on his side before he exhibited difficulty breathing. Then additional minutes passed as Moore lay on his side until he stopped breathing all together. Most importantly, none the six officers who actually engaged in the fight with Moore, or the two supervising sergeants present from the approximate time that the ankle strap was applied, offered testimony that Moore was ever "face-down" on the mattress. And, there was no evidence that any officer applied force to Moore's back so as to restrict the arrestee/detainee's breathing.

Training and Information Bulletin 234 is a five-page document, which at page two includes an artistic rendering depicting a police officer "subduing a violent suspect." In the picture, the arrested suspect is face-down and the arresting officer is shown with a knee in the center of the suspect's back. The text beneath the picture for Bulletin 234 advances that "positional asphyxia may occur when restrained suspects are placed in a prone position for a period of time" Further the description on the page of the bulletin for the positional asphyxia states that "[a] person lying on his . . . stomach has trouble breathing when pressure is applied to the back" The facts in this matter do not support a conclusion that Moore experienced a long period of pressure being applied to his back by the police officer. Above all, the facts contained in the record for this matter establish that a very brief span of time elapsed for Moore lying prone on his stomach area. And Moore was never placed by police officers into a face-down position so as to hinder his breathing processes.

4. Beyond the extensive testimony given by the subject police officers at the PRC board of inquiry proceeding, and during no less than two formal police department investigatory settings (Homicide Division and Internal Affairs Division), the record includes actual time logs, or time-stamped video recordings, of occurrences that show appellant and other officers were well aware of Moore's situation for which monitoring and oversight of the detention/arrest were executed. Applying the time logs to the testimony by officers leads to inferences that were ignored by the PRC. An impartial adjudicator's comprehension of the record of the time involved in the struggle with Moore, as well as the brief span of time

between the end of the violent struggle and the first signs that Moore manifested indications of having trouble with his breathing, thoroughly disprove the PRC's decision's rationale and findings that appellant Officer Brown violated the guideline set out in Berkeley Police Department Training and Information Bulletin 234. The mechanically created time entries show and lead to the following facts:

a. The apartment building, where Moore resided with Mr. Hayes, had a video camera that recorded activity on the sidewalk in front of the building. The recording showed that by 11:57 p.m. appellant and Officers Tu and Smith were at the scene. Approximately three minutes after the arrival of the police officers, Mr. Hayes interacted with the officers at 12:00.05 p.m. More than 26 minutes elapsed before Officer Smith along with the arrested Mr. Hayes exited the building at 12:26 a.m. Hence, appellant had interacted with Moore at the apartment unit for more than twenty minutes.

At 12:28:38 a.m., Officer Smith went again into the building. (Officer Smith reentered the apartment building upon hearing appellant's distress call for "officer in need of assistance.") Less than two minutes elapsed from the beginning of the fight by Moore against Officer Tu and appellant when appellant sought other police officer backup. And, more than 28 minutes had elapsed after the first contact between Moore and appellant along with Officer Tu before engaging in the physical alteration that resulted in Moore falling onto the surface of a mattress.

At 12:29:43 a.m., Officer Smith reached the fifth floor level to assist appellant and Officer Tu in attempting to restrain Moore.

By 12:30:23 a.m., Officer Mathis, Officer Gardner and Officer Kastmiler were at the scene. At 12:30:52 a.m., those police officers reached the fifth floor level to add appellant, Officer Tu and Officer Smith in attempting to restrain Moore. Hence, Officer Smith left Moore's apartment approximately 90 seconds into the fight with Moore.

By 12:30:45 a.m., or nearly simultaneous to involvement in the fight by Officers Mathis, Gardner and Kastmiler, both Sergeant Phillips and Sergeant Cardoza had arrived at the apartment building. Hence, when the police sergeants reached the apartment building, appellant along with five other police officers had engaged in an altercation with Moore for less than six minutes.

At 12:34:45 a.m., Officer Mathis exited the building. (He left to secure a spit mask after Moore's ankles were bound together.) At that point in time when Officer Mathis left the fight, Moore had been secured by hand cuffs as well as an ankle strap. And Moore was soon rolled onto his side. Thus, from the time appellant laid hands onto appellant until the detainee/arrestee was restrained approximately eight minutes had elapsed. And, approximately four minutes had passed from application of the ankle strap and the time Moore ending his violent resistance to the physical efforts of six police officers.

Approximately 51 seconds, after Officer Mathis reached the sidewalk outside the apartment building, that is at 12:35:36 a.m., Sergeant Cardoza exited the building. (Sergeant Cardoza, the senior supervising police officer, left the building to meet the Fire Department whose gurney was to be used to transport Moore. Sergeant Cardoza left the apartment with Moore breathing while his legs were bound by an ankle scrap. Sergeant Cardoza left after Sergeant Phillips called for the gurney, which was initially sought only to transport Moore, as an alive detainee/arrestee, from the apartment.)

At 12:40:00 a.m., the Fire Department's paramedics reach the building.

b. The police department's "Enhanced Courier System," which captures the time of radio broadcasts by police officers is included in the record. The time-stamped record, when overlaid with the consistent accounts given by officers during various interview reveals critical matter that disproves a lack of oversight of Moore by appellant and other police officers.

At 12:29 a.m., appellant made a broadcast for "additional cover" by other police officers to aid the process of restraining Moore.

By 12:32 a.m., Officer Kastmiler made a broadcast request for a "Wrap."

At 12:33 a.m., Sergeant Cardoza broadcast that the "Wrap" was "on scene."

Sergeant Phillips made a broadcast for a spit mask at 12:33 a.m. (Officer Mathis established that he heard the request for a spit mask after Moore's ankles were bound by the ankle straps so that that police officer left the apartment.)

At 12:34 a.m., Sergeant Philips made "Code-3, gurney" broadcast because the "Wrap [was] not sufficient." (At the time, the sergeant assessed that Moore's size and his fighting disposition along with his scrap-encased ankle necessitated the detainee/arrestee be carried from the apartment for transport to the police station. At the time of Sergeant Philips' request, that supervising police sergeant had observed Moore positioned on his side and that he was breathing without trouble.) At the time, Moore had been on his side for one minute to three minutes, and he showed no sign of troubled breathing.

At 12:35 a.m., Sergeant Philips made another broadcast under Code-4, Code-34. Sergeant Philips sought to have not only a gurney come to the apartment, but for a paramedic as a precaution due to the circumstances.

Approximately five minutes after her initial request for a gurney to transport Moore, who was then breathing without distress, Sergeant Philips made a "Medical Code-3" broadcast to report that Moore had "trouble breathing." Both Sergeant Philips and appellant had monitored Moore's condition as the detainee/arrestee lay on his side.

Two minutes after Sergeant Philips reported noting Moore to exhibit breathing trouble, Sergeant Philips made a broadcast at 12:41 a.m. stating that Moore was "not breathing, starting CPR." Hence, approximately eight minutes passed from the application of the ankle wrap and Moore's cessation of breathing.

- c. Based upon the recorded times for critical matters, there is no clear and convincing evidence for the PRC to determine appellant violated Training and Information Bulletin 234 with regard to:
 - i. Breaching a highest standard of care imposed upon her the lead officer who was purportedly cloaked with an enhance level of duty that exceeded all other line police officers as well as the two police sergeants at the scene of Moore's apprehension.
 - ii. Failing to "made certain that the period of time that [Mr.] Moore was prone on [his] stomach was not extended any longer than absolutely necessary."
 - iii. By not having "constantly monitored [Mr.] Moore's vital signs."
 - iv. Failing to turn (or to have other [police] officers help her turn) [Mr.] Moore [onto his] side as soon as practicable after the [detainee/arrestee] ceased resisting.
- 5. The record lacks expert witness testimony to show that appellant breached a standard of professional conduct that would be expected of a police officer similarly situated as appellant during the interaction with Moore on night of February 12/13, 2013.

There was no expert witness testimony to support the PRC notice that appellant delayed in assuring that appellant was positioned onto his stomach for a period that "was not extended any longer than absolutely necessary." Clear and convincing evidence does not exist to support any determination that appellant was derelict in performance of her duty in timely acting in the events regarding the before the death of the deceased detainee/arrestee.

There was no expert witness testimony that appellant neglected to monitor Moore's vital signs. No expert witness opinion was called to establish that a reasonable trained police officer, similarly situated as appellant, had a duty to assess or evaluate medical vital signs that might suggest imminent physical catastrophe. And the expression of "constantly monitor[ing] vital sign" is vague and indefinite in the context of the performance of the work of a law enforcement officer, who is not shown to be a medical treatment provider. Clear and convincing evidence does not exist to support any determination that appellant failed as a police officer to appropriately and professional monitor the vital signs of the detainee/arrestee before he exhibited signed of breathing distress.

6. Beyond the failure to adequately consider existing time-stamped records, the board of inquiry seems to have ignored the medical evidence regarding Moore's death. The detainee/arrestee did not die by reason of positional asphyxia. Rather, Thomas R. Beaver, M.D., in an Autopsy Report, concluded that the cause of Moore's death was "acute combined drug intoxication." The blood as drawn from Moore revealed "methamphetamine and codeine at toxic levels." Hence, Moore's ingestion of powerful controlled substances killed that individual. (Dr. Beaver was compelled to record in the autopsy notes that a glass pipe, as typically used to smoke illicit drugs, fell out of Moore's elaborate hair during the autopsy.)

In addition toxic drug ingestion, Dr. Beaver found that Moore's death had contributing causes of "severe cardiomegaly⁹ with left ventricular dilation and hypertrophy," which was summarized as "intrinsic cardiovascular disease." And Moore died as a further consequence of chronic "morbid obesity" in that the decedent carried 347 pounds on a five-foot, eight-inch frame at the time of his death.

Ultimate Determination

7. The PRC's conclusions that Police Officer Gwendolyn Y. Brown exhibited acts or omissions that constituted a violation of Training and Information Bulletin No. 234 was not supported by clear and convincing evidence. The detainee/arrestee, Xavier Moore as a restrained person, was not placed in a face-down prone position for too long a period of time. And, Police Officer Brown had no higher obligation to effect the monitoring of "vital signs" of Xavier Moore as compared with the supervising police sergeants at the scene or the other police officers present in the room when the detainee/arrestee stopped breathing. The PRC Complaint's allegation No. 7 against the subject Berkeley Police Department officer cannot be sustained; and, must be deemed as unfounded.

LEGAL CONCLUSIONS

1. Appellant makes several arguments in opposing the PRC action. Some arguments require responses as follows:

⁹ Cardiomegaly is a condition of the heart that is commonly referred to as a enlarged heart. The risk of complications from an enlarged heart include heart failure because of the weakened heart muscle that results from the enlarged heart. And cardiac arrest and sudden death are noted to spring from the disruptions in a heart's beating rhythm that is frequently associated with an enlarged heart. (MayoClinic.org, "Diseases and Conditions-Enlarged Heart (April 3, 2014), Mayo Foundation for Medical Education and Research.)

LACK OF SUFFICIENT ANALYTICAL BRIDGE BETWEEN RAW EVIDENCE AND THE ULTIMATE DETERMINATION THAT ADVERSELY IMPACTS APPELLANT

2. In administrative law, a requirement exists that an administrative decision maker must make findings of fact and explain the decision. Such requirement is an essential due process protection. (*Goldberg v. Kelly* (1970) 397 U.S. 254.)

Moreover, an administrative adjudication agency or decision maker must explain how the findings of fact justify the decision's order. For a reviewing entity or court to effect a review of the decision maker's adjudication process, the decision maker must make findings not only of basic facts, but also make "findings to bridge the analytic gap between the raw evidence and the ultimate decision or order." (*Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The Supreme Court's decision in *Topanga* established a necessity that an agency's written decision must include language that shows an "analytic gap" exists to facilitate "orderly analysis and minimizes the likelihood that the [decision maker] will randomly leap from evidence to conclusions." Furthermore, the findings or determinations in an agency's written decision enable the reviewing body or court to trace and examine the agency's mode of analysis without having to grope through the record in search of some evidence that supports the decision maker's factual findings and legal conclusions. Also, the properly constituted set of findings, or articulated legal determinations, enable the parties to effect a well-considered review of the grounds that might be pursued in consideration for seeking judicial review. And a decision maker's use of written findings act as a function to persuade the parties that the administrative decision making was executed in a careful, reasoned and equitable manner. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles supra*, 11 Cal.3d at pp. 515-517.) Another important authority declares that even a local agency's adjudicatory decisions "must be supported by findings that link the evidence in the proceeding to the ultimate decision." (Calf. Gov. Code, § 11425.50.)

In this matter, the PRC board of inquiry issued a findings report, March 21, 2014. That board of inquiry report, which served as the agency's written decision, set out spanned six pages of text. But, the PRC board of inquiry report failed to supply the necessary analytic link between the basic facts and its ultimate conclusion by a vote of six to zero so as lead to a determination on appeal that the determination was a arbitrary leap to fantastical conclusions that unduly harms appellant. Hence, under the controlling legal doctrines stated above, the PRC board of inquiry's findings report is legally insufficient to be affirmed as a determination of misconduct on the part of appellant.

FALLACY UNDERPINNING PRC DETERMINATION

3. PRC's decision concludes that appellant's acts and omissions constitute misconduct. The PRC's determinations are grounded upon inferences along four lines.

An inference is a "deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established" through the proceeding. (Evid. Code, § 600, subd. (b).)

The PRC decision sets out inferences leading to the conclusions purportedly pertaining to appellant's misconduct by way of breaching a standard of conduct for police officers in guarding against positional asphyxia of a detainee/arrestee who may be taken into custody following a violent struggle. The PRC's decision essentially reaches four critical inferences that because:

- i. Appellant was the "lead" front-line police officer, she held a greater duty of care for oversight in the handling of Moore.
- ii. As the lead police officer and also in that she was situated near the head and shoulder of Moore as he struggled on the mattress on the apartment's floor, appellant was obligated to assure that the detainee/arrestee was prone on his stomach not "longer than absolutely necessary."
- iii. As the lead police officer and due to appellant's situation at the head and shoulder region of the detainee/arrestee, appellant was obligated to "constantly monitor Moore's vital signs."
- iv. As the lead police officer and due to appellant's situation at the head and shoulder region of the detainee/arrestee, appellant had a duty to personally turn, or direct other officers to turn Moore onto his side as soon as practicable after the detainee/arrestee ceased resisting.

A close reading and comprehension of the material contained in the more than 950-page record can not reasonably or logically lead to those inferences. The PRC's inferences were neither logically nor reasonably drawn from the facts in the matter.

Rather those four aforementioned determinations are fallacies. As fallacies, they are propositions or arguments that may seem persuasive despite being unsound. A fallacy's power of persuasion arises from the fallacy's superficial resemblance to a sound form of reasoning. The similarly of a fallacy, in having an appearance of sound reasoning, lends a false air of plausibility for the faulty proposition or argument. In this matter, the four prongs of the FRC decision's determination for appellant's supposed misconduct illustrate "fallacies resulting from defective grounds." Such fallacies are oriented to grounds that are inadequate for establishing the specific issue of misconduct of the police officer. The fallacies are hasty generalizations as the PRC's conclusions regarding appellant having committed unprofessional misconduct as a police office have grounds oriented upon an insidiously deceptive approach in advancing the unsound propositions. The four inferences as found in the PRC's determination reflect omission of indispensable elements so as to render those conclusions to be characterized as illogical. Those inferences constitute "leaping to

conclusions" as used in common parlance. And as the above-mentioned four propositions, which underpin the PRC determination sustaining misconduct against appellant, are not logical they are consequentially not reasonable.

FAILURE OF EVIDENCE TO MEET THE STANDARD OF PROOF

4. Under the PRC's regulations, no complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. (PRC Regs, § III, ¶ 19.) The controlling PRC regulation recognizes that the standard of proof denominated as "clear and convincing proof" is such evidence that is greater than a preponderance of evidence, but less that the standard of "beyond a reasonable doubt."

Beyond the guidance of the PRC regulation, a sound definition for "clear and convincing evidence" is set out in the Judicial Council of California Civil Jury Instructions (CACI), section 201. That section in CACI defines "clear and convincing evidence" as evidence that is "more likely true." And the CACI section proclaims that clear and convincing proof requires a higher burden of proof for which the party must persuade the trier of fact that it is "highly probable that the fact is true." (CACI No. 201 (2014 edition.) (Emphasis added.) But, that recently crafted civil jury instruction may be criticized as insufficiently rigorous in light of the California Supreme Court's language as enunciated approximately 115 years ago. In Sheehan v. Sullivan (1899) 126 Cal. 189, 193, the supreme court prescribed a spectrum of formulations in framing the concept of "clear and convincing" evidence, which is sometimes noted as "clear and convincing evidence to a reasonable certainty." The state supreme court noted "clear and convincing evidence" may be expressed as such proof that:

'Must be clear, satisfactory, and convincing;' 'clear and satisfactory;' 'clear and convincing;' 'very satisfactory;' 'strong and convincing;' 'clear, unequivocal, and convincing;' 'clear, explicit, and unequivocal;' 'so clear as to leave no substantial doubt;' 'sufficiently strong to command the unhesitating assent of every reasonable mind.' (Sheehan v. Sullivan, supra, 126 Cal. 189, 193; cf. In re Angelia P. (1981) 28 Cal.3d 908, 919.) (Emphasis added.)

Regardless of the definition used to define the controlling standard of proof, the PRC board of inquiry's determinations and conclusions lacked clear and convincing proof of evidence necessary to sustain a determination of appellant's culpability in the events in February 2013 that involved Mr. Xavier C. Moore. The board of inquiry's determination is legally insufficient to be affirmed.

5. Appellant's arguments at the hearing on appeal in this matter as well as in the hearing written arguments, and two post-hearing written briefs, raise other grounds¹⁰ for reversal of the PRC determination against appellant. Those arguments are not addressed in this Decision as the Discussion and Legal Conclusions, above, provides sufficient basis to sustain the Order below. Those other arguments may be addressed either by the City Council's or a reviewing appellate court's order or directive for remand or reconsideration of this case.

ORDER

- 1. The Berkeley Police Department Review Commission's decision to sustain Allegation No. 4 in PRC Complaint No. 2327 against Police Officer Gwendolyn Y. Brown was not correct; and it is reversed. The appropriate disposition of that allegation is "unfounded."
- 2. The Berkeley Police Department and the Berkeley Police Review Commission shall place this decision in each agency's respective files that contain the Police Review Commission's original decision pertaining to PRC Complaint No. 2327.

DATED: December 4, 2014

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California

Those arguments not addressed in this Decision include: (1) that the defective or legal insufficiency ab initio of the PRC Complaint renders the entire process flawed and impermissible; (2) that the PRC's board of inquiry violated principles of ethics by disclosing confidential information regarding the underlying adjudication of PRC Complaint No. 2327 so as to jeopardized the due process rights of the affected police officers, including appellant; (3) that the PRC, through its counsel, made advanced new determinations or justifications for the board of inquiry's assessment of appellant's alleged misconduct after the board had published its Findings Report, dated March 21, 2014; and, that the PRC's erred in the misinterpretation of its own regulations.

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7	CALOCA APPEAL
	FROM THE FINDINGS OF THE CITY OF BERKELEY POLICE REVIEW COMMISSION *******
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9	IN THE MATTER OF PRC COMPLAINT # 2327
10	GWENDOLYN BROWN
11	A POLICE OFFICER, GWENDOLYN BROWN'S
12	APPEALING FROM THE FINDINGS OF Summary of Arguments
13	THE POLICE REVIEW COMMISSION
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16	Citation Guide:
17	1. Board of Inquiry binder. (PRC's 1)
18	Cited as: BOI binder tabs 1-10 page #
19	Officer testimony to Berkeley Police Department, BOI binder tab 10. (PRC's 1) Cited as: "Officer Name" BPD page #
20	2. Officer testimony to Police Review Commission investigators, BOI binder tab 7 and 8.
21	(PRC's 1) Cited as: "Officer Name" PRC page #
22	3. Officer testimony before Board of Inquiry located in transcription of Board of Inquiry hearing. (PRC's 2 a and b) Cited as: "Officer Name" BOI page #
23	4. Board of Inquiry findings report (PRC's 1)
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A. Procedural argument

By the PRC's own admission, the earliest that "final" summary of findings from the Board of Inquiry could have been delivered to Officer Brown was clearly after the days allotted for in the regulations governing the PRC. Even if this failure does not interfere with the Commissions ability to sustain Officer Brown, it is still evidence of the struggles the PRC has had with understanding and conforming to its own regulations, let alone legal principals, such as the standard of clear and convincing evidence.

B. Challenge of the sufficiency of complaint

The PRC regulations speak for themselves; the exception the PRC has claimed applies here (that they do not have to hear Officer Moore's challenge of sufficiency of the complaint in complaints brought under PRC regulation II(A)(4)) does not exist and conflicts with the plain wording and organization of the relevant section of PRC regulations.

PRC regulations section II lays out the procedural hurdles a complaint must pass before a formal hearing is held. Within the first three sub sections, subsection II(A)(1) through Subsection II(A)(3), two different types of complaints are described, a complaint brought by the public (subsection II(A)(1-2) and a complaint brought by the PRC when a complainant is unavailable (subsection II(A)(3). these sections are directly followed by sub section II(A)(4) which describes the process through which the "sufficiency of a complaint" may be challenged. There is absolutely nothing in subsection A, in section II or in the PRC regulations as a whole which creates the exception claimed by the PRC in their papers and at hearing. Thus Officer Brown and the other officers were denied level of due process early on in these proceedings which could have potentially dismissed this case before hearing.

C. The Boards Findings were insufficient in affording Officer Brown a fair chance to appeal.

The record in this case is vast and due to the vagueness of the Boards findings, as discussed in Brown's pre-hearing brief and at hearing, Officer Brown was unable to determine what she was appealing from.

The PRC admitted at hearing that Bulletin 234 applies to all officers equally; that nothing in the record supported the Boards claim that by nature of being the "lead officer" Brown had a heightened duty under this bulletin; that Officer Tu, the first officer to testify before the board, testified that it was NOT the responsibility of the lead officer to follow Bulletin 234; (BOI 61:16) and that following Officer Tu's testimony the Board did not ask any other officers this question nor did they seek clarification from Capt. Harris who was present at the hearing to answer police policy questions of the board.

At hearing, the PRC attempted to back away from this clearly erroneous assumption on which the Board's findings here were based (that Officer Brown had a special duty regarding Bulletin 234 as lead officer). The PRC now claimed that Brown had a greater duty because she was close to the head of Moore. There are multiple problems with this migration in the Board's reasoning.

This was not the reasoning of the Board of Inquiry assembled to investigate Officer Brown's actions and empowered to sustain a finding against her; this is the reasoning of the PRC officer who is not a commissioner and was not a member of the Board of Inquiry investigating Brown's actions. Even if this shift in rationale came from the commissioners themselves, they would be allowed to, after appeal, to change their stated reason for sustaining Officer Brown after having their initial (and final) findings disproven.

The PRC does not and cannot create policy for the Berkeley Police Department so their attempts to broaden the meaning of this policy beyond its clear language is in excess of their authority.

"The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter fom giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)"

Opinion of the Alameda county District Attorney's Office attached hereto as "Exhibit A."

Additionally, the PRC has stipulated that "the Berkeley PRC has no authority to create or change the policies of the Berkeley Police Department as expressed in its Training and Information Bulletins." Stipulation attached hereto as "Exhibit B."

Neither the PRC nor the Board of Inquiry created nor can they amended Bulletin 234; they are not involved in the implementation or training of this policy, therefore they cannot create exceptions to the policy nor can they, from a place of experience and knowledge, speak to the policy's purpose and meaning.

Even if the PRC or Board of Inquiry had these powers (which they clearly do not) it would still be an egregious breach of Officer Brown's due process rights to sustain her for an interpretation of Bulletin 234 that did not exist, and had not been written, trained or otherwise communicated to Officer Brown before her actions in question before the Board of Inquiry.

D. The Boards findings are still not clear even after hearing

The Board's findings were too vague on their face to enable the parties to determine the basis for review or the basis for the agency's action, in that they failed to form an analytic bridge between the evidence and the agency's decision. Topanga Assn. for a Scenic community v. County of Los Angeles (1989) 214 Ca1.App.3d 1348, 1356, citing Topanga Assn. for a Scenic community v. County of Los Angeles (1974) 11 Cal.3d 506, 514.

Even after the PRC had a chance to explain these findings at hearing, it is still unclear what exactly "the basis" for the Board's findings here is. The Board stated that it felt that it felt Brown had a heightened duty being the lead (but not ranking) officer. As discussed above that is clearly not the case.

In this case, there was a prolonged struggle between Moore and the Officers which ended when Moore finally stopped resisting enough for officers to restrain her and move her to her side. Neither the Board nor the PRC has yet stated whether they believe the failing in this policy happened while Moore was still resisting, or whether they believe it happened after Moore was finally restrained and rolled over.

If the Board believed the violation happened before, Bulletin 234 envisions only one scenario which officer's "should avoid" when a suspect is actively resisting and that is the one depicted on tab 9 page 362 of the BOI binder (PRC's Exhibit 1) which, as discussed at length at hearing, did not happen here (no pressure was applied to Moore's back: PRC report [PRC's Exhibit 1] page 29, 42, 43; TU PRC 164, 188:32; Smith PRC 217:12-20; Mathis PRC 233:29; Kastmiller PRC 269:37; Philips PRC 284:22; Cardoza PRC 301:11)

If the Board believed that the violation occurred after Moore stopped resisting, than they did not point out in their findings, nor did they, when afforded the opportunity at hearing, point to any piece of the record tending to indicate, that Moore was not repositioned onto her side in a reasonable amount of time, that Brown failed at this time to monitor Moore's vitals, or that, after being "restrained," Moore was "placed" in a face down position for an "long period of time." In fact, the weight of the evidence tends to indicate the opposite, that Moore was immediately rolled to her side

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once she stopped resisting, that as soon as this was done Officer Brown began monitoring her vitals after which merely moments passed before Moore stopped breathing, however, in those moments, Moore was on her side (not face down) having her vitals monitored.

Regardless of how and when the Board determined that Officer Brown violated Bulletin 234, it was not expressed in their findings and even when given a chance at hearing to fill this void, the PRC devoted their entire argument to whether or not Brown was a credible witness and whether or not during the struggle with police Moore was on her stomach or partially on her stomach. The semantics the PRC chose to focus on at hearing shed no light on the vague basis for the Board's findings.

E. The PRCs explanation for the Board's determination that Moore was on her stomach during the struggle is misleading and regardless still would not support a sustained finding under Bulletin 234

The only section of Bulletin 234 that envisions a suspect who is actively resisting is portrayed in the graphic on page 362 of tab 9 of the BOI binder (PRC's 1). There was overwhelming testimony that no officer applied pressure to Moore's back as described in the policy or depicted in the graphic shown on page 362. (PRC report page 29, 42 [Smith & Tu], 43 [Mathis, & Cardoza]; TU PRC 164 avoid "putting a subject face down, applying direct pressure to the middle of the back upper body to the face" & 188:32 no pressure by any officer to back; Smith PRC 217:12-20 no pressure by any officer to back; Mathis PRC 233:29 no pressure by any officer to back; Kastmiller PRC 269:37 no pressure by any officer to back; Philips PRC 284:22 no pressure to back; Cardoza PRC 301:11 no pressure by any officer to back)

The Board placed considerable effort at hearing as to whether Moore was on her stomach (as opposed to partially on her stomach) during the struggle and strangely no effort into determining whether or not Moore was in this position after she was restrained, as envisioned in Bulletin 234 (BOI binder tab 9 page 363).

The PRC asked the Officers if a prone person was on their stomach and the officers replied yes. This was because, obviously, a prone person is not on their back.

Being "on one's stomach" is clearly distinguished as merely a form of prone in the policy in question which specifically deals with where pressure is being applied on a suspect. NONE of these officers were asked about whether or not Moore was in the position, and subjected to the pressures discussed in the policy, despite the fact that the PRC had possession of these policies and in fact included them in their report. Additionally, the Board failed to make inquiries regarding the meaning of Bulletin 234 with Capt. Harris who was on hand to answer such questions.

PRC determined whether Moore was "on her stomach" based off of the general position of her body by asking officers about the orientation of Moore's ankles (e.g. PRC 252:18). Clearly this is a different, more general distinction, than the specific position envisioned in the policy which is itself distinguishable from other forms of prone, per the policy itself.

Additionally per the police report Moore was getting up on her knees and elbows (police report page 83 [second section of the BOI binder (PRC's 1)]) and partially on side (police report page 84, 91, 92 [second section of the BOI binder (PRC's 1)])

Whether or not Moore was on her side or partially on her side during the struggle is completely irrelevant to Bulletin 234 absent a showing of pressure applied to the suspects back, (see graphic on page 362 of BOI binder [PRC's 1]) which we know did not happen here.

F. The testimony of the other officers, deemed more reliable by the Board, did not contradict Brown's testimony and, in fact, clearly demonstrates that Bulletin 234 was not violated.

Officer Gardner corroborated Brown's testimony that Moore's was partially on her side during the struggle. (Gardner PRC 254:48-255:1, 245:15 & 252:41, BPD 210:374 — Moore partially on side, see also PRC report page 19 Gardner BPD 317:681 Moore's ankles were together one on top of other)

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The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Smith was credible in testifying that when he entered the room (i.e. during the struggle), the struggle on the mattress had begun, and Ms. Moore "..was laying prone on her stomach" (Smith -PRC 212:44-45) in that section cited by the PRC Smith was explaining that by face down in his earlier statement, he meant on the stomach side of her body and that her face/head were free and, in fact, moving around. In Smith's BPD interview cited by the PRC (Smith BPD 264) Smith agreed with Sgt. Hong's statement that Moore was on his front side and partially on mattress.

Smith also testified that he left the room as soon as Moore was restrained and did not observe her position after that point (PRC 217:39); that he disagreed with Commissioner Bernstien's statement that Moore's "hips were square" and Smith responded that "She was kind of offset of the mattress" (BOI 158:8); Smith said Moore was initially rolled to her side to get her arm free (BOI 161:20); He left the room before brown announced Moore had stopped breathing (BOI 168:21); and that for the majority of struggle Moore's head was facing the wall (BOI 173:4).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Mathis was credible in his testimony that when he entered the apartment (i.e. during the struggle), Ms. Moore was "chest down because ... the toes were pointing towards the ground." (Mathis -PRC 226.) However, this is just a general facing up or facing down statement and, in fact, Mathis was not actually looking at Moore's upper torso when he made this observation (BOI 217:1) In the section of the his BPD interview cited by the PRC (Mathis -BPD 185, 186) Mathis' exact words were that Moore was "face down... I mean, this is all - this all happened pretty quick." (BPD 185), and then at the Board of Inquiry Mathis testified that he did not recall Moore's position when he left the room, stating "I don't recall. I don't know -- That all transpired very quickly" (BOI 220:11).

Mathis also testified that he left to retrieve a spit mask right after control gained of Moore (BOI 220:13). At that point in the struggle, Mathis Agreed that Moore was at least "kind of subdued" (BOI 220:24).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Kastmiller was credible is saying that, when he entered the room, Ms. Moore was cuffed and on his stomach (BPD 277). In that same response Kastmiller stated that 3 officers were in a struggle to control Moore and that Moore was kicking and flailing around, (PRC 261) in that same line Kastmiller says that Moore was flailing around and trying to get back up.

Officer Kastmiller also testified that Officers were struggling to control Moore even after Moore was handcuffed (Kastmiller BPD 277, 278, 280); Moore trying to stand back up (BPD 278); Moore stopped resisting sometime after leg restraints were put on, but Moore was already on side at this point (BPD 281:410); Kastmiller estimated that time from stopping resisting to stopping breathing was maybe a minute (BPD 282:474); that around 5-10 seconds after on her side and restrained Moore stopped breathing (PRC 269:35); Moore was heavy and hard to move (PRC 272); The scene was chaotic, and so it is possible some testimony of other officer's might be different from his (BOI 232:5).

The Board apparently, according to the PRC's opposition not the board's findings, found that Sgt. Cardoza was credible when he stated that when he entered the room, Ms. Moore was face down, meaning lying on the front of her body (BPD 235) In that statement, Cardoza was agreeing with Sgt. Hong's statement that Moore had the front of her body down. The PRC also Cited; (PRC 307, BPD 238) in both of these pages from these two different interviews Cardoza describes Moore's state when he left as "actively resisting" i.e. MOVING.

Sgt. Cardoza also testified that Moore kicking fighting screaming (i.e. moving) (BPD 234); that Moore was still resisting when she was both strapped and cuffed (BPD 238); Moore was still resisting when Cardoza left the apartment (PRC 307); Cardoza also stated that "When I went in, there was still active struggle, so at no point was Ms. Moore, for lack of a better word, limp. There was still struggling going on, so at no point during my interaction was she ever just flat" (BOI 237:11); and quite significantly, Cardoza testified that throughout the struggle there was no need to take Moore's vitals because she was actively struggling and screaming, so that would indicate that she was breathing

and had a pulse (BOI 239:9). It should be noted that Sgts. Cardoza and Philips were the ranking officers on scene.

The Board apparently, according to the PRC's opposition not the board's findings, found that Sgt. Phillips was credible when she testified that when she first entered the room, she saw four officers attempting to restrain Ms. Moore, who was lying on her stomach (BPD 294). In this same response, Philips noted that Moore was violently resisting and that she (Philips) had requested a gurney because it was "apparent that officers would be unable to move or lift (Moore)... due to his large size", Philips also notes that Moore was rolled to her side as soon as she stopped resisting and that brown was monitoring her vitals both before and after Moore stopped breathing

Sgt Phillips also testified that Moore's head was facing the wall (PRC 279); Mathis was struggling with Moore's legs (PRC 279); after the struggle Tu looked exhausted, so Philips sent him outside for air (BPD 300); While not resisting Moore was on her left side and Brown was monitoring vitals before and after Moore stopped breathing (BPD 300-302); After ankle straps were applied Moore calmed and was rolled on her left side (PRC 283); Moore was only prone maybe 1-2 minutes in Philips presence (PRC 289); Moore was moved IMMEDIATELY to her side after the strap was applied (PRC 289); Moore was on her side for a couple minutes before stopped breathing (PRC 290).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Tu was credible when he testified that Ms. Moore fell onto the mattress on her left side, later rolled herself onto her stomach on top of her left arm (BPD 154). On this same page cited by the PRC Tu recalls how Moore was on her side, and then, sometime later, rolled onto his stomach to guard his arm form the officers who were trying to handcuff him, and that the officers were unable to move him to get the arm free. The other section cited by the PRC here (BPD 183) says nothing about Moore being on her stomach and instead Tu talks about the fact that, while being large and in-shape, he was unable to move Moore.

Officer Tu also testified that once Moore was moved immediately to her side once she was non-combative, stating that "it's pretty standard... once they are not combative, put'em on their side". (BPD 167); that Officer Brown was checking Moore's pulse and breathing (BPD 160); Brown lost a pulse one minute after she was rolled to her side (BPD 160); Moore was violently resisting (i.e. moving) (PRC 181); Moore was looking left while prone (PRC 187); Brown was monitoring Moore's vitals (PRC 187-88); the officers put Moore on her side as they trained to do (PRC 188); Moore was kicking screaming and that meant that she was also breathing (PRC189); Moore was combative even after cuffed (BOI 38:21) and even after leg restraints (BOI 40:4); Moore's chest was canted/twisted and not square to the mattress (BOI 41:5); As soon as Moore calmed she was rolled to her side and that took several officers to do (BOI 44:16); Brown was monitoring breathing and pulse when Tu left the room (BOI 45:7-16); As soon as Moore was rolled to her side, her pulse was checked, it was determined that Moore had a pulse and then Tu stepped outside (BOI 47:12); Even after she became compliant Moore was still moving around (BOI 60:16); It is NOT the lead officers responsibility to monitor vitals (BOI 61:16).

Additionally, it was unreasonable for the Board to question Officer Brown's reliability based on her recalling, more than one year after the fact, that witness stated that he thought Moore "was going to kill him" instead of that "he thought Moore was going to attack him and that he feared for his safety," or because she failed to recall a brief conversation with a Coroner's office the night of the incident.

G. Response to new arguments raised by the PRC after Brown's appeal

The PRC should not be allowed to amend or broaden the Board's findings in order to attack Officer Brown's appeal. However, some of the statements made by the PRC for the first time in their Opposition or even at hearing should be discussed because they represent the PRC's continued

confusion over bulletin 234 and the complete lack of evidentiary support for the findings against Officer Brown.

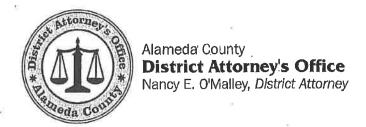
The findings clearly state that Brown bore extra responsibility as primary officer (yet, not ranking officer on scene), this finding by the BOI is completely unsupported by the evidence. The PRC admitted as much at hearing, they should not be allowed to fundamentally change their rationale post appeal because their initial rationale was disproven.

Notwithstanding this fact, the PRC new rationale is also not supported by the wording of Bulletin 234 or the facts. The PRC fundamentally changed the rationale for the sustained finding from Brown's role as lead officer to her position near Moore's head. However, there were eight officers on scene in this chaotic incident and their positions were constantly changing due to the struggle. Even the furthest officer from Moore, Sgt. Philips, was observing Moore's ability to breathe (as discussed above she also observed Brown monitor Moore's vitals throughout the brief moments between the struggle and when Moore stopped breathing). For the PRC to argue that the several other officers positioned all around Moore were unable to monitor her vitals when Sgt. Philips was able to do so from afar is a bit farfetched and certainly not enough to put the burden solely on Officer Brown. And most importantly, as discussed above that it was the testimony of Officer's Brown, Smith, Tu and Sgt. Philips that Brown began monitoring Moore's vitals as soon as she stopped resisting and until she stopped breathing. As discussed above, it was the testimony of Officer Tu and Sgt. Cardoza that it was completely unnecessary to monitor Moore's vitals while she was resisting because she was clearly breathing and had a pulse. And there was ABSOLUTELY ZERO testimony from ANY officer or sergeant that Officer Brown was not monitoring Moore's vitals.

In their closing statements to the at hearing the PRC rebutted Officer Brown's claim that Moore was subdued for at most a couple minutes (the testimony of Sgt. Philips) by stating that Officer Tu testified that at the Board of Inquiry, more than a year after the incident, that a few minutes passed between Moore getting restrained and stopping breathing (The PRC cited page 61:8 of the BOI transcript at hearing), however, not only is this statement inconsistent with the other officers who were in the room during this period (Tu was exhausted and step outside for air) but this statement is also inconsistent with Tu's prior statement to BPD that Brown lost a pulse one minute after she was rolled to her side (BPD 160). Tu also asked to stand on his prior statements at that very Board of Inquiry from which the PRC plucked this conflicting accounting of time (BOI 22:4). Irrespective of the PRC's use of this outlying statement, there is absolutely nothing in the record that indicates that either a couple minutes or a few would constitute the "long periods of time" discussed in Bulletin 234, nor has the PRC pointed to any part of the record which indicates that Brown was not monitoring Moore's vitals for this period.

Lastly, while admitting that the only officer questioned regarding the Board's stated reason for sustaining Officer Brown, that she was the lead officer, replied that it was NOT the responsibility of the "lead" officer to check vitals (BOI 61:16) the PRC backtracked yet again pointing out that the following exchange Tu explained that in this case, it just so happened to be that Officer Brown was the person who was monitoring Moore's Vitals. (BOI 61:16-23) So, the PRC's new assertion is that it was Officer Brown's duty to monitor Moore's vitals because she was the one monitoring them? Officer Tu did not say that Brown had a heightened duty due to her positioning or designation as lead (in fact, he said the opposite of that); in addition to that, irrespective of any heightened duty, Brown was right their monitoring Moore's vitals from the end of the struggle to when she stopped breathing.

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7	Dated: October 10, 2014 Respectfully submitted,
8	RAHYS LUCIA STERN, PC
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10	(10 Callacer / Loins
11	By: Harry Stern
12	Jonathan Murphy
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14	Attorneys for Gwendolyn Brown
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July 10, 2014

Sarah Reynoso, Assistant City Attorney City of Berkeley Office of the City Attorney 2180 Milvia Street Berkeley, CA 94704

Re: Request for Legal Opinion

Dear Ms. Reynoso:

I am writing in response to your request for a legal opinion on whether the release of confidential police personnel records from a recent Berkeley Police Review Commission (PRC) investigation is a crime. The short answer is that it does not appear that criminal liability attaches to such a disclosure. This opinion is based on a review of the applicable Berkeley Municipal Code (B.M.C.) sections, the administrative regulations governing the PRC, information submitted by Harry S. Stern on behalf of the Berkeley Police Association, and independent legal research.

Penal Code section 832.7

The PRC's records and findings are considered confidential and protected from disclosure by Penal Code section 832.7. (See Berkeley Police Assn. v. City of Berkeley (2008) 167 Cal.App.4th 385.) Both the administrative regulations and earlier versions of the confidentiality agreement signed by the PRC Commissioners expressly incorporate and implement the confidentiality provisions of Penal Code sections 832.5 - 832.7. The problem is that those statutes do not provide for any type of penalty or remedy for a violation of the confidentiality provisions. "Despite its comprehensiveness, the statutory scheme [for disclosure of police personnel records] does not provide a remedy for violation of its disclosure procedures." (Rosales v. City of Los Angeles (2000) 82 Cal.App.4th 419, 427; see also City of Hemet v. Superior Court (1995) 37 Cal.App.4th 1411, 1430 ["[T]he statutes do not provide any penalty or remedy for breach of confidentiality."]; Fagan v. Superior Court (2003) 111 Cal.App.4th 607, 614.) The case law is uniform in recognizing and acknowledging that the Legislature has not declared a violation of section 832.7 to be a crime and that it has not provided a statutory remedy for such a violation.

Government Code section 1222
Government Code section 1222 provides that:

"Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the

punishment of such delinquency, is punishable as a misdemeanor."

For purposes of this legal opinion, we assume that the Attorney General is correct in concluding that a violation of Penal Code section 832.7, *under certain circumstances*, may constitute a crime under the provisions of Government Code section 1222. (82 Ops.Cal.Atty.Gen. 242 (1999).)¹

We further assume for the purposes of this discussion, that the administrative regulations and the confidentiality and non-disclosure agreements signed by PRC commissioners are legally sufficient to impose a duty of confidentiality on the commissioners. The issue, however, is whether a PRC member would qualify, as a matter of law, as a "public officer, or person holding any public trust or employment" within the meaning of Government Code section 1222. We think this is unlikely.

In People v. Rosales (not to be confused with Rosales v. City of Los Angeles, supra), the Court discussed the general attributes of "public office" and "public officer" in order to determine whether the appellant in that case was a public officer or a mere employee for the purposes of Penal Code section 425.

"A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public.... The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.... [¶] [T]wo elements now seem to be almost universally regarded as essential to a determination of whether one is a 'public officer': First, a tenure of office which is not transient, occasional or incidental, but is of such a nature that the office itself is an entity in which incumbents succeed one another ..., and,

Nevertheless, it is likely that a reviewing court would not look favorably on an attempt to impose criminal liability using a more general statute when, as in this case, the courts have interpreted the omission of such a provision from this specific statutory scheme as intentional. (See, e.g., Rosales v. City of Los Angeles, supra, 82 Cal.App.4th at 428 ["Given the comprehensiveness of the statutory scheme, the Legislature could have easily provided a remedy if one was intended. The fact that a remedy or penalty for violation of its mandates was not included in the statute is a strong indication that such a right was not intended."].) Rosales was decided 14 years ago and the scheme still lacks a penalty provision today.

[&]quot;[I]t is a cardinal rule of statutory interpretation that specific statutory regulations control over the general statutes." (Singh v. Superior Court (2006) 140 Cal.App.4th 387, 399; see also In re James M. (1973) 9 Cal.3d 517, 522 ["It is... an established rule of statutory construction that particular provisions will prevail over general provisions."].) Should a court conclude that the Legislature's omission of a penalty provision from the specific statutory scheme is intentional, it would likely refuse to allow use of the more general statute to impose criminal liability. We are unaware of any case, published or unpublished in the 15 years since the Attorney General issued its opinion, in which a violation of Penal Code section 832.7 was actually prosecuted under the provisions of Government Code section 1222.

second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial."

(People v. Rosales (2005) 129 Cal.App.4th 81, 86 [citing Dibbs v. County of San Diego (1994) 8 Cal.4th 1200, 1212, internal citations and quotation marks omitted]; see also Schaefer v. Superior Court (1952) 113 Cal.App.2d 428, 432-433 ["The words 'public office' are used in so many senses that the courts have affirmed that it is hardly possible to undertake a precise definition which will adequately and effectively cover every situation."].)

The regulations governing the PRC do not appear to delegate to the commissioners any part of the City's legislative, executive, or judicial functions. The general purpose of the PRC "is to provide for community participation" in setting policies, practices and procedures for the Berkeley Police Department, and "to provide a means for prompt, impartial, and fair investigation of complaints." (B.M.C., § 3.32.010.) The PRC's power and duties are limited to investigation of complaints, review of policies and procedures, and making recommendations regarding policy and procedure, either in general or in connection with a particular investigation. (B.M.C., § 3.32.090.) The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter from giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)

In the end, the PRC's function appears to be purely advisory. The citizen-appointees that make up the PRC are not part of the City government, nor delegates of any of it powers. They are not so much "public officers" as the actual public. It is difficult to imagine a court interpreting the Government Code as extending to them.²

Furthermore, B.M.C. section 3.32,020 expressly prohibits any officer or employee of the City to be appointed to the commission. It is highly unlikely that a court would interpret an appointment to the PRC as conferring on the appointee the status of public officer or employee when such persons are prohibited from serving on the Commission.

Because it does not appear that a PRC member would be considered a "public officer, or person holding any public trust or employment" within the meaning of Government Code section 1222, we do not believe that statute provides a basis for criminal liability in this case.

Berkeley Municipal Code

Nor does the B.M.C. independently provide for criminal liability for such disclosure as occurred here. (See B.M.C., Title 3, Chapter 3.32.) Indeed, the administrative regulations governing the PRC seem to limit the remedy for a breach of confidentiality to "removing a Commissioner from

Indeed, for the purposes of the A.G.'s opinion, it was assumed that the disclosure had been made by "an officer of a law enforcement agency" when concluding that such a disclosure "may be prosecuted as a breach of official duty under the terms of Government Code section 1222." Compare the title, office, duties and powers of a law enforcement official with those of a PRC Commissioner.

a BOI" and "notification of the breach to the appointing City Councilmember." (See PRC regulations, sections (V)(D)(1) and (3).)

In summary, assuming that a member of the Berkeley PRC "leaked" confidential information regarding the investigation of the in-custody death of Kayla Moore to the *Daily Californian*, we do not believe that the PRC member responsible would be chargeable with a crime.

We express no opinion on potential civil liability for the disclosure of confidential records protected by Penal Code section 832.7 (cf. Rosales, supra, 82 Cal.App.4th at 428-428), or for breach of the confidentiality agreement signed by each Commissioner upon appointment.

Sincerely,

NANCY E, O'MALLEY

District Attorney

by:

Gregory Dolge

Deputy District Attorney

cc: Harry S. Stern

Vanessa Kirk

Subject:

FW: RE:

Hi Jonathan,

Today is one of the City of Berkeley's voluntary furlough days, and the attorney I want to consult is not in.

But I will stipulate that the Berkeley PRC has no authority to create or change the policies of the Berkeley Police Department as expressed in its Training and Information Bulletins.

I hope this will do.

Sincerely, Kathy

Katherine J. Lee Police Review Commission Officer City of Berkeley 510.981.4960

From: Jonathan Murphy [mailto:]Murphy@rlslawyers.com]

Sent: Friday, October 10, 2014 12:20 PM

To: Lee, Katherine

Subject:

"The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter fom giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)"

Jonathan Murphy
Attorney at Law
RAINS LUCIA STERN, PC
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Lee, Katherine

From: Sent:

OAK Filings@DGS [OakFilings@dgs.ca.gov]

Monday, October 20, 2014 10:02 AM

To:

Lee, Katherine

Subject:

OAH AutoReply

Thank you for your email to the General Jurisdiction Division of the Office of Administrative Hearings (OAH). Your email has been received and will be processed within 48 hrs. Emails received after 5:00 PM will be deemed filed the next business day.

Beginning September 3, 2013, OAH will require all case documents filed by governmental entities with our Sacramento and Oakland offices to be submitted electronically. Attorneys representing individuals or individuals who choose to do so may also file documents electronically, but documents filed electronically must be filed according to the electronic filing and naming guideline. The guideline can be found at (http://www.dgs.ca.gov/oah/GeneralJurisdiction/EFiling.aspx).

Please note: If parties do not follow the OAH General Jurisdiction Electronic Filing and Naming Guidelines, OAH reserves the right to reject an email. You will be notified if your email will not be processed because it does not follow the guidelines.

Please visit our website at http://www.dgs.ca.gov/oah/GeneralJurisdiction.aspx for more information about the General Jurisdiction Division or OAH.

Should you have any questions pertaining to your filing and/or your case, please call (510) 622-2722 to speak with a case manager. If you have any questions as to the Electronic Filing and Naming Guideline, please contact Tzer Lor-Snyder @ (916) 263-0550 or Maryjosephine Norrington @ (213) 576-7200.

Lee, Katherine

From:

Lee, Katherine

Sent:

Monday, October 20, 2014 9:21 AM

To:

Subject:

'OakFilings@dgs.ca.gov' OAH#201460886, Ofc. Gwendolyn Brown, Agency's Post-hearing Reply Brief, Hearing date

Attachments:

2327 PRC post-hearing reply 10-20-14.pdf

Katherine J. Lee **Police Review Commission Officer** City of Berkeley 510.981.4960

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Date: October 20, 2014

To: Office of Administrative Hearings

1515 Clay Street, Suite 206

Oakland, CA 94612

From: Katherine J. Lee, PRC Officer

Police Review Commission 1947 Center Street, 3rd floor

Berkeley, CA 94704

Re: OPPOSITION TO APPEAL OF OFC. GWENDOLYN BROWN

Appeal of PRC Board of Inquiry Findings, Complaint #2327

OAH Case # 2014060886

Procedural Background

On September 25, 2014, a hearing in this appeal was held before Administrative Law Judge Perry O. Johnson. Jonathan Murphy of Rains Lucia Stern appeared on behalf of Appellant, Officer Gwendolyn Brown, and Katherine J. Lee appeared on behalf of the City of Berkeley Police Review Commission. The hearing was concluded, but ALJ Johnson left the record open for counsel for Officer Brown to submit additional briefing for these purposes: 1) providing argument in support of introducing new evidence, namely, the documents marked as Exhibits C, D, and E; 2) supplying the numerous citations to the record made by counsel during his oral argument; and 3) providing authority for a specific point of law advanced by counsel.

But the brief that counsel filed does not to conform to the ALJ's request. It is further noted that Counsel for Officer Brown was given until October 10, 2014, to submit his brief, but it was not submitted to the PRC by the due date, as it was emailed to the PRC at 7:22 p.m. on the evening of October 10. The due date for this reply is October 24.

Discussion

1. No argument has been made to support the submission of new evidence at hearing, or to show why it could not have been submitted earlier in these proceedings.

After Officer Brown's counsel attempted to submit Exhibits C, D and E into evidence at the hearing, the PRC objected on the basis of relevance. After hearing brief arguments from the parties, ALJ Johnson invited the parties to submit written arguments in support or opposition. However, Officer Brown's post-hearing brief is devoid of any mention of Exhibits C, D, or E, let alone any argument regarding their relevancy. Moreover, counsel failed to make the requisite

showing that the documents constitute newly discovered evidence that could not been presented earlier. While the exhibits were not available at the time of Officer Brown's appeal (April 3, 2014), Exhibits C, D, and E are dated May 7, August 4, and May 30, 2014, respectively, and were thus were available to counsel before he filed his pre-hearing brief on August 18, 2014. Yet, counsel did not attempt to enter the documents into evidence with that brief, and instead waited until the September 25 hearing to do so.

In any case, it is the ALJ's task on appeal to determine whether the evidence in the record supports the PRC's finding of misconduct. The leak of confidential information described in Exhibits C, D, and E, while egregious, is irrelevant to that determination. Accordingly, the PRC respectfully requests that Exhibits C, D, and E not be admitted into evidence for this appeal.

2. The post-hearing brief exceeds the scope of what was permitted.

At the hearing, counsel for Officer Brown argued extensively for the officer's position and, in the course of doing so, referenced dozens of citations to the record. Administrative Law Judge Johnson requested that counsel submit those citations to him in writing. Certainly, the requested citations had to be provided in context. In that regard, Section F of the October 10 brief (page 4, line 26, through page 6, line 24) appears to fall within the scope of allowable evidence to be submitted after the hearing.

In response to counsel's assertion at the hearing that "The PRC does not and cannot create policy for the Berkeley Police Department," Administrative Law Judge Johnson requested authority for that proposition, and counsel requested a stipulation from the PRC. A stipulation was obtained after the hearing. It was thus appropriate for counsel to include the discussion of this stipulation in context, as it appears on page 3, lines 1-12, including the referenced Exhibits A and B, of the October 10 brief.

However, the remainder of counsel's post-hearing brief goes far beyond what was allowed. Counsel for Officer Brown repeats arguments made in the pre-hearing brief and at the September 25 hearing, and adds new arguments in rebuttal to the points the PRC made in its brief and at the hearing. None of those arguments are within the scope of the briefing allowed by ALJ Johnson.

Accordingly, the PRC respectfully requests that, other than Section F (page 4, line 26, through page 6, line 24) and page 3, lines 1 - 12 (and Exhibits A and B), the remainder of the October 10 post-hearing brief be stricken from the record.

Respectfully submitted,

Katherine J. Lee, Police Review Commission Officer

cc: OAH – by electronic filing on October 20, 2014.

Internal Affairs – by email to Berkeley Police Department on October 20, 2014

Subject Officer, G. Brown #16 – by email on October 20, 2014.

Attorneys Harry Stern and Jonathan Murphy of Rains Lucia Stern, PC – by email on October 20, 2014.

1 Harry Stern, SBN 176854 Jonathan Murphy, SBN 286791 2 RAINS LUCIA STERN, PC 2300 Contra Costa Boulevard, Suite 500 3 Pleasant Hill, CA 94523 Telephone: 925.609.1699 4 Facsimile: 925.609.1690 5 Email: hstern@rlslawyers.com 6 Attorneys for Gwendolyn Brown 7 8 CALOCA APPEAL 9 FROM THE FINDINGS OF THE CITY OF BERKELEY POLICE REVIEW COMMISSION 10 ***** 11 12 OAH Case # 2014060886 IN THE MATTER OF 13 PRC COMPLAINT # 2327 **GWENDOLYN BROWN** 14 A POLICE OFFICER, GWENDOLYN BROWN'S RESPONSE TO POLICE REVIEW COMMISSION'S OBJECTION TO 15 APPEALING FROM THE FINDINGS OF THE APPELLANT'S SUMMARY OF ARGUMENT. POLICE REVIEW COMMISSION 16 17 18 Irrespective of assertions made, again at that 11th hour, by the PRC, it has been the PRC which 19 has continuously tried to alter its justifications and make new arguments well after the time the Board 20 of Inquiry was allotted to draft its final findings, which it did months ago. 21 22 Nearly the entire document, not merely section "F" as argued in the PRC's objection, is a 23 summary of Brown's argument with written citations to the record supporting these assertions. (See 24 Brown's summary of arguments attached hereto as Exhibit A) The writing down of these assertions and citations puts the PRC in no grater disadvantage than they were in when the heard them at hearing. 25 The only section that does not entirely mirror that format are portions of section G, where it was 26 necessary to confront assertions made by the PRC for the first time at hearing, for which Brown had no 27 28 opportunity to prepare.

OFC. GWENDOLYN BROWN, AGENCY'S POST-HEARING REPLY

The PRC made new arguments and justifications after the Board of Inquiry's final findings were published and continued to do so even at the hearing. Most notably, the PRC argued at hearing that Officer Tu's testimony during the Board of Inquiry that it was not officer Brown's duty as lead officer to monitor vitals (as asserted in the Board of Inquiry's findings) should be disregarded because he then testified that regardless of this lack of duty, he did observe Brown monitoring Ms. Moore's vitals. This new assertion, as well as other arguments made by the PRC at hearing and after the final finding of the Board of Inquiry, were confusing and illogical but none the less required a response. Appellant Brown took leave to file her papers under the good faith assumption that she would have an opportunity to confront these ridiculous assertions.

The PRC has an equal allotment of time to respond to Officer Brown's closing papers as

Officer Brown had to draft them and should endeavor to do so through citation to the record and not through last minute attempts to further deprive Officer Brown of her due process rights.

Dated: October 20, 2014

Respectfully submitted,

RAINS LUCIA STERN, PC

By: Harry Stern

Jonathan Murphy

Attorneys for Gwendolyn Brown

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6 7	CALOCA APPEAL					
8	FROM THE FINDINGS OF THE CITY OF BERKELEY POLICE REVIEW COMMISSION ********					
9						
10	IN THE MATTER OF PRC COMPLAINT # 2327					
11	GWENDOLYN BROWN A POLICE OFFICER, GWENDOLYN BROWN'S					
12	APPEALING FROM THE FINDINGS OF Summary of Arguments					
13	THE POLICE REVIEW COMMISSION					
14						
15	d d					
16	Citation Guide:					
17 18	1. Board of Inquiry binder. (PRC's 1) Cited as: BOI binder tabs 1-10 page #					
19	Officer testimony to Berkeley Police Department, BOI binder tab 10. (PRC's 1) Cited as: "Officer Name" BPD page #					
20	2. Officer testimony to Police Review Commission investigators, BOI binder tab 7 and 8.					
21 22	(PRC's 1) Cited as: "Officer Name" PRC page # 3. Officer testimony before Board of Inquiry located in transcription of Board of Inquiry hearing.					
23	(PRC's 2 a and b) Cited as: "Officer Name" BOI page # 4. Board of Inquiry findings report (PRC's 1)					
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Gwendolyn Brown's Pre-Hearing Brief

A. Procedural argument

By the PRC's own admission, the earliest that "final" summary of findings from the Board of Inquiry could have been delivered to Officer Brown was clearly after the days allotted for in the regulations governing the PRC. Even if this failure does not interfere with the Commissions ability to sustain Officer Brown, it is still evidence of the struggles the PRC has had with understanding and conforming to its own regulations, let alone legal principals, such as the standard of clear and convincing evidence.

B. Challenge of the sufficiency of complaint

The PRC regulations speak for themselves; the exception the PRC has claimed applies here (that they do not have to hear Officer Moore's challenge of sufficiency of the complaint in complaints brought under PRC regulation II(A)(4)) does not exist and conflicts with the plain wording and organization of the relevant section of PRC regulations.

PRC regulations section II lays out the procedural hurdles a complaint must pass before a formal hearing is held. Within the first three sub sections, subsection II(A)(1) through Subsection II(A)(3), two different types of complaints are described, a complaint brought by the public (subsection II(A)(1-2) and a complaint brought by the PRC when a complainant is unavailable (subsection II(A)(3). these sections are directly followed by sub section II(A)(4) which describes the process through which the "sufficiency of a complaint" may be challenged. There is absolutely nothing in subsection A, in section II or in the PRC regulations as a whole which creates the exception claimed by the PRC in their papers and at hearing. Thus Officer Brown and the other officers were denied level of due process early on in these proceedings which could have potentially dismissed this case before hearing.

C. The Boards Findings were insufficient in affording Officer Brown a fair chance to appeal.

The record in this case is vast and due to the vagueness of the Boards findings, as discussed in Brown's pre-hearing brief and at hearing, Officer Brown was unable to determine what she was appealing from.

The PRC admitted at hearing that Bulletin 234 applies to all officers equally; that nothing in the record supported the Boards claim that by nature of being the "lead officer" Brown had a heightened duty under this bulletin; that Officer Tu, the first officer to testify before the board, testified that it was NOT the responsibility of the lead officer to follow Bulletin 234; (BOI 61:16) and that following Officer Tu's testimony the Board did not ask any other officers this question nor did they seek clarification from Capt. Harris who was present at the hearing to answer police policy questions of the board.

At hearing, the PRC attempted to back away from this clearly erroneous assumption on which the Board's findings here were based (that Officer Brown had a special duty regarding Bulletin 234 as lead officer). The PRC now claimed that Brown had a greater duty because she was close to the head of Moore. There are multiple problems with this migration in the Board's reasoning.

This was not the reasoning of the Board of Inquiry assembled to investigate Officer Brown's actions and empowered to sustain a finding against her; this is the reasoning of the PRC officer who is not a commissioner and was not a member of the Board of Inquiry investigating Brown's actions. Even if this shift in rationale came from the commissioners themselves, they would be allowed to, after appeal, to change their stated reason for sustaining Officer Brown after having their initial (and final) findings disproven.

The PRC does not and cannot create policy for the Berkeley Police Department so their attempts to broaden the meaning of this policy beyond its clear language is in excess of their authority.

"The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter fom giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)"

Opinion of the Alameda county District Attorney's Office attached hereto as "Exhibit A."

Additionally, the PRC has stipulated that "the Berkeley PRC has no authority to create or change the policies of the Berkeley Police Department as expressed in its Training and Information Bulletins." Stipulation attached hereto as "Exhibit B."

Neither the PRC nor the Board of Inquiry created nor can they amended Bulletin 234; they are not involved in the implementation or training of this policy, therefore they cannot create exceptions to the policy nor can they, from a place of experience and knowledge, speak to the policy's purpose and meaning.

Even if the PRC or Board of Inquiry had these powers (which they clearly do not) it would still be an egregious breach of Officer Brown's due process rights to sustain her for an interpretation of Bulletin 234 that did not exist, and had not been written, trained or otherwise communicated to Officer Brown before her actions in question before the Board of Inquiry.

D. The Boards findings are still not clear even after hearing

The Board's findings were too vague on their face to enable the parties to determine the basis for review or the basis for the agency's action, in that they failed to form an analytic bridge between the evidence and the agency's decision. Topanga Assn. for a Scenic community v. County of Los Angeles (1989) 214 Ca1. App.3d 1348, 1356, citing Topanga Assn. for a Scenic community v. County of Los Angeles (1974) 11 Cal.3d 506, 514.

Even after the PRC had a chance to explain these findings at hearing, it is still unclear what exactly "the basis" for the Board's findings here is. The Board stated that it felt that it felt Brown had a heightened duty being the lead (but not ranking) officer. As discussed above that is clearly not the case.

In this case, there was a prolonged struggle between Moore and the Officers which ended when Moore finally stopped resisting enough for officers to restrain her and move her to her side. Neither the Board nor the PRC has yet stated whether they believe the failing in this policy happened while Moore was still resisting, or whether they believe it happened after Moore was finally restrained and rolled over.

If the Board believed the violation happened before, Bulletin 234 envisions only one scenario which officer's "should avoid" when a suspect is actively resisting and that is the one depicted on tab 9 page 362 of the BOI binder (PRC's Exhibit 1) which, as discussed at length at hearing, did not happen here (no pressure was applied to Moore's back: PRC report [PRC's Exhibit 1] page 29, 42, 43; TU PRC 164, 188:32; Smith PRC 217:12-20; Mathis PRC 233:29; Kastmiller PRC 269:37; Philips PRC 284:22; Cardoza PRC 301:11)

If the Board believed that the violation occurred after Moore stopped resisting, than they did not point out in their findings, nor did they, when afforded the opportunity at hearing, point to any piece of the record tending to indicate, that Moore was not repositioned onto her side in a reasonable amount of time, that Brown failed at this time to monitor Moore's vitals, or that, after being "restrained," Moore was "placed" in a face down position for an "long period of time." In fact, the weight of the evidence tends to indicate the opposite, that Moore was immediately rolled to her side

once she stopped resisting, that as soon as this was done Officer Brown began monitoring her vitals after which merely moments passed before Moore stopped breathing, however, in those moments, Moore was on her side (not face down) having her vitals monitored.

Regardless of how and when the Board determined that Officer Brown violated Bulletin 234, it was not expressed in their findings and even when given a chance at hearing to fill this void, the PRC devoted their entire argument to whether or not Brown was a credible witness and whether or not during the struggle with police Moore was on her stomach or partially on her stomach. The semantics the PRC chose to focus on at hearing shed no light on the vague basis for the Board's findings.

E. The PRCs explanation for the Board's determination that Moore was on her stomach during the struggle is misleading and regardless still would not support a sustained finding under Bulletin 234

The only section of Bulletin 234 that envisions a suspect who is actively resisting is portrayed in the graphic on page 362 of tab 9 of the BOI binder (PRC's 1). There was overwhelming testimony that no officer applied pressure to Moore's back as described in the policy or depicted in the graphic shown on page 362. (PRC report page 29, 42 [Smith & Tu], 43 [Mathis, & Cardoza]; TU PRC 164 avoid "putting a subject face down, applying direct pressure to the middle of the back upper body to the face" & 188:32 no pressure by any officer to back; Smith PRC 217:12-20 no pressure by any officer to back; Mathis PRC 233:29 no pressure by any officer to back; Kastmiller PRC 269:37 no pressure by any officer to back; Philips PRC 284:22 no pressure to back; Cardoza PRC 301:11 no pressure by any officer to back)

The Board placed considerable effort at hearing as to whether Moore was on her stomach (as opposed to partially on her stomach) during the struggle and strangely no effort into determining whether or not Moore was in this position after she was restrained, as envisioned in Bulletin 234 (BOI binder tab 9 page 363).

The PRC asked the Officers if a prone person was on their stomach and the officers replied yes. This was because, obviously, a prone person is not on their back.

Being "on one's stomach" is clearly distinguished as merely a form of prone in the policy in question which specifically deals with where pressure is being applied on a suspect. NONE of these officers were asked about whether or not Moore was in the position, and subjected to the pressures discussed in the policy, despite the fact that the PRC had possession of these policies and in fact included them in their report. Additionally, the Board failed to make inquiries regarding the meaning of Bulletin 234 with Capt. Harris who was on hand to answer such questions.

PRC determined whether Moore was "on her stomach" based off of the general position of her body by asking officers about the orientation of Moore's ankles (e.g. PRC 252:18). Clearly this is a different, more general distinction, than the specific position envisioned in the policy which is itself distinguishable from other forms of prone, per the policy itself.

Additionally per the police report Moore was getting up on her knees and elbows (police report page 83 [second section of the BOI binder (PRC's 1)]) and partially on side (police report page 84, 91, 92 [second section of the BOI binder (PRC's 1)])

Whether or not Moore was on her side or partially on her side during the struggle is completely irrelevant to Bulletin 234 absent a showing of pressure applied to the suspects back, (see graphic on page 362 of BOI binder [PRC's 1]) which we know did not happen here.

F. The testimony of the other officers, deemed more reliable by the Board, did not contradict Brown's testimony and, in fact, clearly demonstrates that Bulletin 234 was not violated.

Officer Gardner corroborated Brown's testimony that Moore's was partially on her side during the struggle. (Gardner PRC 254:48-255:1, 245:15 & 252:41, BPD 210:374 – Moore partially on side, see also PRC report page 19 Gardner BPD 317:681 Moore's ankles were together one on top of other)

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The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Smith was credible in testifying that when he entered the room (i.e. during the struggle), the struggle on the mattress had begun, and Ms. Moore "..was laying prone on her stomach" (Smith -PRC 212:44-45) in that section cited by the PRC Smith was explaining that by face down in his earlier statement, he meant on the stomach side of her body and that her face/head were free and, in fact, moving around. In Smith's BPD interview cited by the PRC (Smith BPD 264) Smith agreed with Sgt. Hong's statement that Moore was on his front side and partially on mattress.

Smith also testified that he left the room as soon as Moore was restrained and did not observe her position after that point (PRC 217:39); that he disagreed with Commissioner Bernstien's statement that Moore's "hips were square" and Smith responded that "She was kind of offset of the mattress" (BOI 158:8); Smith said Moore was initially rolled to her side to get her arm free (BOI 161:20); He left the room before brown announced Moore had stopped breathing (BOI 168:21); and that for the majority of struggle Moore's head was facing the wall (BOI 173:4).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Mathis was credible in his testimony that when he entered the apartment (i.e. during the struggle), Ms. Moore was "chest down because ... the toes were pointing towards the ground." (Mathis -PRC 226.) However, this is just a general facing up or facing down statement and, in fact, Mathis was not actually looking at Moore's upper torso when he made this observation (BOI 217:1) In the section of the his BPD interview cited by the PRC (Mathis -BPD 185, 186) Mathis' exact words were that Moore was "face down... I mean, this is all - this all happened pretty quick." (BPD 185), and then at the Board of Inquiry Mathis testified that he did not recall Moore's position when he left the room, stating "I don't recall. I don't know -- That all transpired very quickly" (BOI 220:11).

Mathis also testified that he left to retrieve a spit mask right after control gained of Moore (BOI 220:13). At that point in the struggle, Mathis Agreed that Moore was at least "kind of subdued" (BOI 220:24).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Kastmiller was credible is saying that, when he entered the room, Ms. Moore was cuffed and on his stomach (BPD 277). In that same response Kastmiller stated that 3 officers were in a struggle to control Moore and that Moore was kicking and flailing around, (PRC 261) in that same line Kastmiller says that Moore was flailing around and trying to get back up.

Officer Kastmiller also testified that Officers were struggling to control Moore even after Moore was handcuffed (Kastmiller BPD 277, 278, 280); Moore trying to stand back up (BPD 278); Moore stopped resisting sometime after leg restraints were put on, but Moore was already on side at this point (BPD 281:410); Kastmiller estimated that time from stopping resisting to stopping breathing was maybe a minute (BPD 282:474); that around 5-10 seconds after on her side and restrained Moore stopped breathing (PRC 269:35); Moore was heavy and hard to move (PRC 272); The scene was chaotic, and so it is possible some testimony of other officer's might be different from his (BOI 232:5).

The Board apparently, according to the PRC's opposition not the board's findings, found that Sgt. Cardoza was credible when he stated that when he entered the room, Ms. Moore was face down, meaning lying on the front of her body (BPD 235) In that statement, Cardoza was agreeing with Sgt. Hong's statement that Moore had the front of her body down. The PRC also Cited; (PRC 307, BPD 238) in both of these pages from these two different interviews Cardoza describes Moore's state when he left as "actively resisting" i.e. MOVING.

Sgt. Cardoza also testified that Moore kicking fighting screaming (i.e. moving) (BPD 234); that Moore was still resisting when she was both strapped and cuffed (BPD 238); Moore was still resisting when Cardoza left the apartment (PRC 307); Cardoza also stated that "When I went in, there was still active struggle, so at no point was Ms. Moore, for lack of a better word, limp. There was still struggling going on, so at no point during my interaction was she ever just flat" (BOI 237:11); and quite significantly, Cardoza testified that throughout the struggle there was no need to take Moore's vitals because she was actively struggling and screaming, so that would indicate that she was breathing

and had a pulse (BOI 239:9). It should be noted that Sgts. Cardoza and Philips were the ranking officers on scene.

The Board apparently, according to the PRC's opposition not the board's findings, found that Sgt. Phillips was credible when she testified that when she first entered the room, she saw four officers attempting to restrain Ms. Moore, who was lying on her stomach (BPD 294). In this same response, Philips noted that Moore was violently resisting and that she (Philips) had requested a gurney because it was "apparent that officers would be unable to move or lift (Moore)... due to his large size", Philips also notes that Moore was rolled to her side as soon as she stopped resisting and that brown was monitoring her vitals both before and after Moore stopped breathing

Sgt Phillips also testified that Moore's head was facing the wall (PRC 279); Mathis was struggling with Moore's legs (PRC 279); after the struggle Tu looked exhausted, so Philips sent him outside for air (BPD 300); While not resisting Moore was on her left side and Brown was monitoring vitals before and after Moore stopped breathing (BPD 300-302); After ankle straps were applied Moore calmed and was rolled on her left side (PRC 283); Moore was only prone maybe 1-2 minutes in Philips presence (PRC 289); Moore was moved IMMEDIATELY to her side after the strap was applied (PRC 289); Moore was on her side for a couple minutes before stopped breathing (PRC 290).

The Board apparently, according to the PRC's opposition not the board's findings, found that Officer Tu was credible when he testified that Ms. Moore fell onto the mattress on her left side, later rolled herself onto her stomach on top of her left arm (BPD 154). On this same page cited by the PRC Tu recalls how Moore was on her side, and then, sometime later, rolled onto his stomach to guard his arm form the officers who were trying to handcuff him, and that the officers were unable to move him to get the arm free. The other section cited by the PRC here (BPD 183) says nothing about Moore being on her stomach and instead Tu talks about the fact that, while being large and in-shape, he was unable to move Moore.

Officer Tu also testified that once Moore was moved immediately to her side once she was non-combative, stating that "it's pretty standard... once they are not combative, put'em on their side". (BPD 167); that Officer Brown was checking Moore's pulse and breathing (BPD 160); Brown lost a pulse one minute after she was rolled to her side (BPD 160); Moore was violently resisting (i.e. moving) (PRC 181); Moore was looking left while prone (PRC 187); Brown was monitoring Moore's vitals (PRC 187-88); the officers put Moore on her side as they trained to do (PRC 188); Moore was kicking screaming and that meant that she was also breathing (PRC189); Moore was combative even after cuffed (BOI 38:21) and even after leg restraints (BOI 40:4); Moore's chest was canted/twisted and not square to the mattress (BOI 41:5); As soon as Moore calmed she was rolled to her side and that took several officers to do (BOI 44:16); Brown was monitoring breathing and pulse when Tu left the room (BOI 45:7-16); As soon as Moore was rolled to her side, her pulse was checked, it was determined that Moore had a pulse and then Tu stepped outside (BOI 47:12); Even after she became compliant Moore was still moving around (BOI 60:16); It is NOT the lead officers responsibility to monitor vitals (BOI 61:16).

Additionally, it was unreasonable for the Board to question Officer Brown's reliability based on her recalling, more than one year after the fact, that witness stated that he thought Moore "was going to kill him" instead of that "he thought Moore was going to attack him and that he feared for his safety," or because she failed to recall a brief conversation with a Coroner's office the night of the incident.

G. Response to new arguments raised by the PRC after Brown's appeal

The PRC should not be allowed to amend or broaden the Board's findings in order to attack Officer Brown's appeal. However, some of the statements made by the PRC for the first time in their Opposition or even at hearing should be discussed because they represent the PRC's continued

confusion over bulletin 234 and the complete lack of evidentiary support for the findings against Officer Brown.

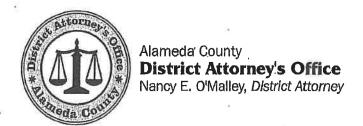
The findings clearly state that Brown bore extra responsibility as primary officer (yet, not ranking officer on scene), this finding by the BOI is completely unsupported by the evidence. The PRC admitted as much at hearing, they should not be allowed to fundamentally change their rationale post appeal because their initial rationale was disproven.

Notwithstanding this fact, the PRC new rationale is also not supported by the wording of Bulletin 234 or the facts. The PRC fundamentally changed the rationale for the sustained finding from Brown's role as lead officer to her position near Moore's head. However, there were eight officers on scene in this chaotic incident and their positions were constantly changing due to the struggle. Even the furthest officer from Moore, Sgt. Philips, was observing Moore's ability to breathe (as discussed above she also observed Brown monitor Moore's vitals throughout the brief moments between the struggle and when Moore stopped breathing). For the PRC to argue that the several other officers positioned all around Moore were unable to monitor her vitals when Sgt. Philips was able to do so from afar is a bit farfetched and certainly not enough to put the burden solely on Officer Brown. And most importantly, as discussed above that it was the testimony of Officer's Brown, Smith, Tu and Sgt. Philips that Brown began monitoring Moore's vitals as soon as she stopped resisting and until she stopped breathing. As discussed above, it was the testimony of Officer Tu and Sgt. Cardoza that it was completely unnecessary to monitor Moore's vitals while she was resisting because she was clearly breathing and had a pulse. And there was ABSOLUTELY ZERO testimony from ANY officer or sergeant that Officer Brown was not monitoring Moore's vitals.

In their closing statements to the at hearing the PRC rebutted Officer Brown's claim that Moore was subdued for at most a couple minutes (the testimony of Sgt. Philips) by stating that Officer Tu testified that at the Board of Inquiry, more than a year after the incident, that a few minutes passed between Moore getting restrained and stopping breathing (The PRC cited page 61:8 of the BOI transcript at hearing), however, not only is this statement inconsistent with the other officers who were in the room during this period (Tu was exhausted and step outside for air) but this statement is also inconsistent with Tu's prior statement to BPD that Brown lost a pulse one minute after she was rolled to her side (BPD 160). Tu also asked to stand on his prior statements at that very Board of Inquiry from which the PRC plucked this conflicting accounting of time (BOI 22:4). Irrespective of the PRC's use of this outlying statement, there is absolutely nothing in the record that indicates that either a couple minutes or a few would constitute the "long periods of time" discussed in Bulletin 234, nor has the PRC pointed to any part of the record which indicates that Brown was not monitoring Moore's vitals for this period.

Lastly, while admitting that the only officer questioned regarding the Board's stated reason for sustaining Officer Brown, that she was the lead officer, replied that it was NOT the responsibility of the "lead" officer to check vitals (BOI 61:16) the PRC backtracked yet again pointing out that the following exchange Tu explained that in this case, it just so happened to be that Officer Brown was the person who was monitoring Moore's Vitals. (BOI 61:16-23) So, the PRC's new assertion is that it was Officer Brown's duty to monitor Moore's vitals because she was the one monitoring them? Officer Tu did not say that Brown had a heightened duty due to her positioning or designation as lead (in fact, he said the opposite of that); in addition to that, irrespective of any heightened duty, Brown was right their monitoring Moore's vitals from the end of the struggle to when she stopped breathing.

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7	Dated: October 10, 2014 Respectfully submitted,
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July 10, 2014

Sarah Reynoso, Assistant City Attorney City of Berkeley Office of the City Attorney 2180 Milvia Street Berkeley, CA 94704

Re: Request for Legal Opinion

Dear Ms. Reynoso:

I am writing in response to your request for a legal opinion on whether the release of confidential police personnel records from a recent Berkeley Police Review Commission (PRC) investigation is a crime. The short answer is that it does not appear that criminal liability attaches to such a disclosure. This opinion is based on a review of the applicable Berkeley Municipal Code (B.M.C.) sections, the administrative regulations governing the PRC, information submitted by Harry S. Stern on behalf of the Berkeley Police Association, and independent legal research.

Penal Code section 832.7

The PRC's records and findings are considered confidential and protected from disclosure by Penal Code section 832.7. (See Berkeley Police Assn. v. City of Berkeley (2008) 167 Cal.App.4th 385.) Both the administrative regulations and earlier versions of the confidentiality agreement signed by the PRC Commissioners expressly incorporate and implement the confidentiality provisions of Penal Code sections 832.5 - 832.7. The problem is that those statutes do not provide for any type of penalty or remedy for a violation of the confidentiality provisions. "Despite its comprehensiveness, the statutory scheme [for disclosure of police personnel records] does not provide a remedy for violation of its disclosure procedures." (Rosales v. City of Los Angeles (2000) 82 Cal.App.4th 419, 427; see also City of Hemet v. Superior Court (1995) 37 Cal.App.4th 1411, 1430 ["[T]he statutes do not provide any penalty or remedy for breach of confidentiality."]; Fagan v. Superior Court (2003) 111 Cal.App.4th 607, 614.) The case law is uniform in recognizing and acknowledging that the Legislature has not declared a violation of section 832,7 to be a crime and that it has not provided a statutory remedy for such a violation.

Government Code section 1222
Government Code section 1222 provides that:

"Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the

punishment of such delinquency, is punishable as a misdemeanor."

For purposes of this legal opinion, we assume that the Attorney General is correct in concluding that a violation of Penal Code section 832.7, *under certain circumstances*, may constitute a crime under the provisions of Government Code section 1222. (82 Ops.Cal.Atty.Gen. 242 (1999).)¹

We further assume for the purposes of this discussion, that the administrative regulations and the confidentiality and non-disclosure agreements signed by PRC commissioners are legally sufficient to impose a duty of confidentiality on the commissioners. The issue, however, is whether a PRC member would qualify, as a matter of law, as a "public officer, or person holding any public trust or employment" within the meaning of Government Code section 1222. We think this is unlikely.

In People v. Rosales (not to be confused with Rosales v. City of Los Angeles, supra), the Court discussed the general attributes of "public office" and "public officer" in order to determine whether the appellant in that case was a public officer or a mere employee for the purposes of Penal Code section 425.

"A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public.... The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.... [¶] [T]wo elements now seem to be almost universally regarded as essential to a determination of whether one is a 'public officer': First, a tenure of office which is not transient, occasional or incidental, but is of such a nature that the office itself is an entity in which incumbents succeed one another ..., and,

Nevertheless, it is likely that a reviewing court would not look favorably on an attempt to impose criminal liability using a more general statute when, as in this case, the courts have interpreted the omission of such a provision from this specific statutory scheme as intentional. (See, e.g., Rosales v. City of Los Angeles, supra, 82 Cal.App.4th at 428 ["Given the comprehensiveness of the statutory scheme, the Legislature could have easily provided a remedy if one was intended. The fact that a remedy or penalty for violation of its mandates was not included in the statute is a strong indication that such a right was not intended."].) Rosales was decided 14 years ago and the scheme still lacks a penalty provision today.

[&]quot;[I]t is a cardinal rule of statutory interpretation that specific statutory regulations control over the general statutes." (Singh v. Superior Court (2006) 140 Cal.App.4th 387, 399; see also In re James M. (1973) 9 Cal.3d 517, 522 ["It is...an established rule of statutory construction that particular provisions will prevail over general provisions."].) Should a court conclude that the Legislature's omission of a penalty provision from the specific statutory scheme is intentional, it would likely refuse to allow use of the more general statute to impose criminal liability. We are unaware of any case, published or unpublished in the 15 years since the Attorney General issued its opinion, in which a violation of Penal Code section 832.7 was actually prosecuted under the provisions of Government Code section 1222,

second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial."

(People v. Rosales (2005) 129 Cal. App.4th 81, 86 [citing Dibbs v. County of San Diego (1994) 8 Cal. 4th 1200, 1212, internal citations and quotation marks omitted]; see also Schaefer v. Superior Court (1952) 113 Cal. App.2d 428, 432-433 ["The words 'public office' are used in so many senses that the courts have affirmed that it is hardly possible to undertake a precise definition which will adequately and effectively cover every situation."].)

The regulations governing the PRC do not appear to delegate to the commissioners any part of the City's legislative, executive, or judicial functions. The general purpose of the PRC "is to provide for community participation" in setting policies, practices and procedures for the Berkeley Police Department, and "to provide a means for prompt, impartial, and fair investigation of complaints." (B.M.C., § 3.32.010.) The PRC's power and duties are limited to investigation of complaints, review of policies and procedures, and making recommendations regarding policy and procedure, either in general or in connection with a particular investigation. (B.M.C., § 3.32.090.) The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter from giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)

In the end, the PRC's function appears to be purely advisory. The citizen-appointees that make up the PRC are not part of the City government, nor delegates of any of it powers. They are not so much "public officers" as the actual public. It is difficult to imagine a court interpreting the Government Code as extending to them.²

Furthermore, B.M.C. section 3.32.020 expressly prohibits any officer or employee of the City to be appointed to the commission. It is highly unlikely that a court would interpret an appointment to the PRC as conferring on the appointee the status of public officer or employee when such persons are prohibited from serving on the Commission.

Because it does not appear that a PRC member would be considered a "public officer, or person holding any public trust or employment" within the meaning of Government Code section 1222, we do not believe that statute provides a basis for criminal liability in this case.

Berkeley Municipal Code

Nor does the B.M.C. independently provide for criminal liability for such disclosure as occurred here. (See B.M.C., Title 3, Chapter 3.32.) Indeed, the administrative regulations governing the PRC seem to limit the remedy for a breach of confidentiality to "removing a Commissioner from

² Indeed, for the purposes of the A.G.'s opinion, it was assumed that the disclosure had been made by "an officer of a law enforcement agency" when concluding that such a disclosure "may be prosecuted as a breach of official duty under the terms of Government Code section 1222." Compare the title, office, duties and powers of a law enforcement official with those of a PRC Commissioner.

a BOI" and "notification of the breach to the appointing City Councilmember." (See PRC regulations, sections (V)(D)(1) and (3).)

In summary, assuming that a member of the Berkeley PRC "leaked" confidential information regarding the investigation of the in-custody death of Kayla Moore to the *Daily Californian*, we do not believe that the PRC member responsible would be chargeable with a crime.

We express no opinion on potential civil liability for the disclosure of confidential records protected by Penal Code section 832.7 (cf. *Rosales*, *supra*, 82 Cal.App.4th at 428-428), or for breach of the confidentiality agreement signed by each Commissioner upon appointment.

Sincerely,

NANCY E. O'MALLEY

District Attorney

by:

Gregory Dolge

Deputy District Attorney

cc: Harry S. Stern

Vanessa Kirk

Subject:

FW: RE:

Hi Jonathan,

Today is one of the City of Berkeley's voluntary furlough days, and the attorney I want to consult is not in.

But I will stipulate that the Berkeley PRC has no authority to create or change the policies of the Berkeley Police Department as expressed in its Training and Information Bulletins.

I hope this will do.

Sincerely, Kathy

Katherine J. Lee Police Review Commission Officer City of Berkeley 510.981,4960

From: Jonathan Murphy [mailto:JMurphy@rlslawyers.com]

Sent: Friday, October 10, 2014 12:20 PM

To: Lee, Katherine

Subject:

"The PRC does not have the power to adopt or change policy, impose discipline, implement any recommendation it may make, or compel the City Council or City Manager to do so. Indeed, it has been expressly held that the PRC is forbidden by the City Charter fom giving any direct orders to BPD or any other City department, and that the responsiveness of any department to the PRC is solely within the City Manager's discretion. (Brown v. City of Berkeley (1976) 57 Cal.App.3d 223, 234-235.)"

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Date: September 11, 2014

To: Office Of Administrative Hearings

1515 Clay Street, Suite 206

Oakland, CA 94612

From: Katherine J. Lee, PRC Officer

Police Review Commission 1947 Center St., 3rd floor Berkeley, CA 94704

Re: OPPOSITION TO APPEAL OF OFC. GWENDOLYN BROWN

Appeal of PRC Board of Inquiry Findings, Complaint #2327

OAH Case # 2014060886

Case Background

On February 19 and 20, 2014, the Berkeley Police Review Commission (PRC), sitting as a whole, held a closed Board of Inquiry (BOI) hearing on complaint # 2327. The complaint was initiated by a vote of the Commissioners, because it involved a death.

The Board heard testimony from the six subject officers, which included Officer Gwendolyn Brown #16, and from two witness officers. The Commissioners relied on the contents of the Board of Inquiry Hearing Packet and the testimony presented at the hearing to reach their findings on the five allegations outlined in the Report of Investigation.

For this death case, five votes constituted the majority needed for a finding. At the conclusion of the hearing, the Commissioners unanimously sustained Allegation #4: Improper Police Procedure as to Officer Brown, which is the subject of this appeal. It is the only sustained allegation of the 16 total allegations against the six officers. (Not every allegation was lodged against every officer.) On February 26, 2014, PRC staff sent a summary of findings to the subject officers. Upon discovering that that summary contained two errors, PRC staff sent the subject officers a revised summary of findings March 6, 2014. On March 21, 2014, the PRC issued a Findings Report that set forth the reasons for the Commissioners' findings. Officer Brown filed her appeal of the Board's finding of "sustained" as to Allegation #4 on April 3, 2014.

¹ Under the PRC's Regulations, a Board of Inquiry consists of three commissions, except in cases involving a death, where the Commission sits as a Board of the whole, with a minimum of six Commissioners. In this case, six of the nine Commissioners comprised the BOI; two Commissioners recused themselves and one could not attend for medical reasons.

Standard of Review

The administrative law judge shall review the administrative record and conduct an independent examination of the evidence that was before the PRC. The PRC bears the burden through the record below of establishing that the PRC's decision is correct. The standard of proof is clear and convincing evidence – more than a preponderance, but less than beyond a reasonable doubt.

Factual Summary

The sustained allegation that is now the subject of this appeal arose from an incident in which Officers Gwendolyn Brown, Kenneth Tu, and Brandon Smith of the Berkeley Police Department (BPD) responded to a call from a John Hayes, who reported that he was having a dispute with his roommate, Xavier "Kayla" Moore, and that Ms. Moore needed to "go to the psych ward." The officers determined that a person named Xavier Moore had a \$10,000 arrest warrant out of San Francisco. The three officers arrived at the front door of the apartment. Shortly afterwards, Officer Smith left with Mr. Hayes because it was determined he had a warrant.

Officers Brown and Tu observed that Ms. Moore seemed delusional. Officer Brown told Ms. Moore she had a warrant for her arrest. Ms. Moore denied that there was a warrant. Officers Brown and Tu attempted to take her into custody by grabbing her hands. Ms. Moore resisted, and pulled the officers back into the apartment with her, and they all fell onto a mattress on the floor. A struggle ensued, despite the officers' commands to stop resisting. The two officers were able to get a handcuff on Ms. Moore's right wrist. Officer Smith returned, having heard Officer's Brown radio call for help, and he helped get a second, connected handcuff on Ms. Moore's left wrist.

BPD Officers Brian Mathis, Timothy Gardner, and Nikos Kastmiler then arrived to assist. Officer Smith left to attend to Mr. Hayes, whom he had left in his patrol car. Ms. Moore was still resisting. The two witness officers, Sergeant Amber Phillips and Sergeant Benjamin Cardoza, arrived at the apartment as the struggle continued. Officer Mathis applied the ankle portion of the WRAP restraint to Ms. Moore's ankles. Ms. Moore continued to struggle for a short time after the ankle strap was applied. Officer Mathis left the apartment to get a spit hood from his patrol car, having heard someone call for one.

Eventually, Ms. Moore stopped resisting. Shortly after that, her breathing and her pulse stopped. The officers removed the handcuffs from Ms. Moore, rolled her off the mattress onto her back, and Officer Tu began chest compressions. The Berkeley Fire Department transported her to Alta Bates hospital, where she was pronounced dead.

² Ms. Moore was a transgender woman who, in some statements in the record below, is occasionally referred to as "he."

The Board's Findings

Allegation #4 is entitled "Improper Police Procedure" and reads as follows:

"Whether, during the process of physically taking Ms. Moore into custody, subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: "Placing restrained persons in a face-down prone position for long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs."

The Board unanimously voted to sustain this allegation because the most credible testimony established that Ms. Moore was on her stomach for most of the time that she was resisting, that when she stopped resisting, with her hands cuffed and her ankles in restraints, she remained on her stomach for a period of minutes before she was turned onto her side.

The Board found that, as the lead officer, Officer Brown had the primary duty to follow Training and Information Bulletin 234, and make sure that the period of time Ms. Moore was on her stomach was not extended any longer than was absolutely necessary, and constantly monitor Ms. Moore's vital signs. The Board determined, however, that Officer Brown failed to turn (or have other officers help her turn) Ms. Moore on her side as soon as practicable after she stopped resisting, and failed to constantly monitor her vital signs.

Discussion

1. The PRC adequately addressed objections regarding the sufficiency of the complaint.

This objection was first raised by counsel for Officer Brown in August 2013, and addressed by the then-PRC Officer shortly thereafter. (BOI binder, Tab 1.3) Section II.A.3. of the PRC's regulations is entitled "Unavailability of Complainant" and reads, in its entirety:

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

By the express language of the section, the Commissioners may undertake an investigation or take other appropriate action where a complainant is unavailable or a death is involved. The section gives the PRC broad power to act in an in-custody death case. Thus, a PRC-initiated action is not treated as a "complaint" described in Section II.A.1 and not subject to the regulations regarding sufficiency of complaints filed by aggrieved parties.

³ The citation style established in Officer Brown's Pre-Hearing Brief is adopted here.

That the PRC assigned this investigation a complaint number was simply for the administrative convenience of PRC staff.

2. The Board's decision to sustain the allegation that Officer Brown failed to follow Training and Information Bulletin 234 is supported by clear and convincing evidence in the record.

First, Training & Information Bulletin 234 is clear that "stomach down" is one way that a person can be in a prone position. "Positional Asphyxia may occur when restrained suspects are placed in a prone position for a period of time, **particularly stomach down**." (Emphasis added; BOI binder, Tab 9, pp. 361-362.) The Bulletin continues, "A person lying on his/her stomach has trouble breathing when pressure is applied to the back" (Id., at 362); this further shows that "prone" is being equated with, and not distinguished from, "stomach down."

In its Findings Report, the Board described Ms. Moore as being "prone (on her stomach)" so there would be no confusion as to the position in which they believed Ms. Moore was improperly maintained. The idea of "prone" as meaning "on one's stomach" was clarified in several instances of officer testimony. For instance, Officer Brown was asked, "When we say prone that means someone is positioned how?" Answer: "Down on his stomach." (Brown - PRC 139.) Officer Mathis was asked, "Is stomach down also called the prone?" Answer: "Yes." (Mathis - PRC 226); Sgt. Cardoza was asked, "And by prone you mean on the stomach?" Answer: "Yes." (Cardoza - PRC 299.) Other officers themselves simply stated that prone meant on one's stomach. (Tu - BPD 167; Smith - PRC 212; Mathis – BOI 218:1.)

In reaching its decision in Allegation #4 against Officer Brown, the Board had to resolve inconsistencies in the officers' testimony at the BOI hearing and in interviews with the PRC investigators and the BPD. Eventually, "[t]he Board did not give great weight to the testimony of Ofc. Brown, finding that her recollections were inconsistent in substantial part with the record and the recollections of other Officers, and that particular misrecollections by Ofc. Brown called into question her overall reliability of her memory of the events." (Findings Report, pp. 5-6.)⁴

Regarding Appellant's assertion that she was the only officer not given a chance to rely on her prior statement, the BOI transcript shows that, at the start of Officer Brown's appearance, a part of the proceedings were not recorded. "(Audio commences with proceedings in progress.)" (Brown – BOI 78:3-4.) Immediately following, attorney Harry Stern is given the opportunity to examine Officer Brown, which he waives; he then invokes the two-questioner limit. (Id., at 78:5-18.) A review of all other subject officers' testimony shows that the protocol of the BOI Chair, Commissioner Sherman, was to begin each officer's appearance by asking if he or she wished to make a statement or rely on their prior statement; ask their attorney if he wished to examine his client; and ask if the officer was willing to waive the two-person limit for questioners. (Tu – BOI 21-22; Gardner – BOI 67-68; Smith – BOI 134-135; Mathis BOI -213-214; Kastmiler – BOI 226.) It is submitted that Officer Brown was given the option of making a statement or relying on her prior statement, but that that portion of the proceeding was unfortunately not recorded.

Officer Brown, in her statements to BPD investigators and the PRC Officer, said that when Ms. Moore pulled her and Officer Tu onto the mattress, Ms. Moore fell partially onto her side and partially onto her stomach. (Brown - BPD 327, PRC 137.) When Ms. Moore was handcuffed, she was still partially on her side and partially on her stomach (Brown - PRC 141). And, when Ms. Moore eventually stopped resisting, she was partially on her side and partially on her stomach. (Brown - BPD 335.) Consistent with those statements, at the BOI, Officer Brown testified that Ms. Moore was never completely on her stomach. (Brown - BOI 114:8.)

The statements of most other officers regarding the positioning of Ms. Moore were contrary to Officer Brown's and consistent with each other. Officer Smith said that when he entered the room, the struggle on the mattress had begun, and Ms. Moore ". . .was laying prone on her stomach" (Smith - PRC 212:44-45; also BPD 182, BOI 157:8-9), and when he left to return to his patrol car and Mr. Hayes, Ms. Moore was still on her stomach (Smith - PRC 217:24 – 218:1, BPD 264).

Officer Mathis said that when he entered the apartment, Ms. Moore was "chest down because . . . the toes were pointing towards the ground." (Mathis - PRC 226.) He told the Board much the same at the hearing, saying that she was "in a prone position" when he entered (Mathis - BOI 215:20), clarified as being on her stomach (Mathis - BOI 218:1). He said that, as he applied the ankle straps to Ms. Moore she was face down, with her chest on the mattress (Mathis - BPD 181), and after Ms. Moore was subdued, and when he left to retrieve a spit mask, she was still face down (Mathis - BPD 185, 186).

Officer Kastmiler said that when he entered the room, Ms. Moore was cuffed and on his stomach (BPD 277, PRC 261).

Sgt. Cardoza stated that when he entered the room, Ms. Moore was face down, meaning lying on the front of her body (BPD 235); i.e., on her stomach (PRC 299) or prone (BOI 237:5). When he left the apartment, soon after the ankle straps were applied, the last position of Ms. Moore still face down on the mattress (PRC 307, BPD 238).

Sgt. Phillips said that when she first entered the room, she saw four officers attempting to restrain Ms. Moore, who was lying on her stomach (BPD 294, PRC 279).

Officer Tu recalled that Ms. Moore fell onto the mattress on her left side, later rolling onto her stomach on top of her left arm.(BPD 154, 183). Once she stopped resisting, Ms. Moore was "still prone on his stomach." (BPD 167). Officer Gardner did not have a clear recollection of Ms. Moore's position when he first entered the apartment, stating that he [Moore] wasn't on his back but couldn't remember if he was on his stomach or partially on his side (PRC 210).

The Board found the testimony of Officer Mathis regarding the struggle and when the struggle subsided particularly credible, as he testified he would not have left the scene to get the spit mask if Ms. Moore had not stopped resisting. (BOI 220:24 - 221:2).

The Board also found the testimony of Sgt. Cardoza and Sgt. Phillips credible because neither of them was involved in the struggle with Ms. Moore. By the time of their arrival, at least four officers were attempting to restrain Ms. Moore, and there was no need nor any room for them to help the others. But Sgts. Cardoza and Phillips were closely observing the scene, ready to assist when and as needed. In fact, the sergeants handed one of the officers the WRAP device that they had brought with them, and Sgt. Phillips requested a gurney from the Berkeley Fire Department because she realized it would be needed to transport Ms. Moore down from the 5th floor and out the building (PRC 283).

As they were not participating in the physical restraint of Ms. Moore, Sgts. Cardoza and Phillips had an overview of the struggle, and their recollections of what was happening and the positioning of Ms. Moore's body are thus likely to be clearer and more reliable.

Regarding the reliability of Officer Brown's memory, at the Board of Inquiry, Officer Brown was questioned about the factors that led her to believe Ms. Moore was a danger to herself or others. One such factor was a threat that Ms. Moore made to her roommate, Mr. Hayes. Officer Brown said that Mr. Hayes told her Ms. Moore said something to the effect that his roommate "was going to kill him, so he had to get out of the apartment." (BOI 79:22-24). But in the narrative of her police report, Officer Brown wrote, "Hayes said he left the apartment because he thought Moore was going to attack him and that he feared for his safety." (BOI binder, Tab 10, p. 8.)

Additionally, at the BOI, when Officer Brown was asked about speaking to a coroner's investigator, she did not recall doing so (BOI 85:25 – 86:2). Yet the Investigator Narrative by Karen Easling of the Alameda County Coroner's Office states that she called BPD dispatch and that Officer G. Brown returned her call within minutes (BOI binder, Tab 10, p. 112).

Although Officer Brown's appearance at the Board of Inquiry hearing was a year after the incident in question, she was interviewed by the BPD two days after the event, and by the PRC in September 2013. Apart from being questioned twice about the matter prior to the BOI, an incustody death is a rare and unusual circumstance, and one would expect an involved officer's memory about such an atypical event to be clear and consistent.

In finding that, as the lead officer, Officer Brown "had the primary duty" to ensure that Training & Information Bulletin 234 was followed (Findings Report, p. 5), the Board did not find she was solely responsible, contrary to Appellant's assertion. Clearly, all officers present bore responsibility for ensuring that positional asphyxia did not occur.

But the record is uncontroverted that, during the struggle and once Ms. Moore was subdued, Officer Brown was positioned at her head, neck, and shoulder area (Brown - PRC 141-142 after cuffs on; PRC 150 after cuffs and straps; Phillips – PRC 279), while other officers were located below, at the low back, hips, legs, and feet. Officer Brown was thus in the best position to monitor Ms. Moore's breathing and carotid pulse, and as such, bore additional responsibility.

The Bulletin also warns, "Individuals that are obese and/or have large bellies are high risk candidates for sudden death due to positional asphyxia." (BOI binder, Tab 9, p. 363.) As Ms. Moore was obviously obese, this was an indicator that extra precautions were warranted.

The Board did consider whether other officers violated Training & Information Bulletin 234, as this allegation was lodged against all six subject officers. As reflected in the Findings Report (p. 5), the Board decided this allegation was unfounded as to Officers Smith and Mathis, who were no longer in the apartment when Ms. Moore stopped breathing. The Board voted "not sustained" as to Officers Gardner and Kastmiler, meaning there was insufficient evidence to support this allegation, but that the allegation had not been proven false. The Board could not agree on a majority finding as to Officer Tu ("majority" in this case meaning five notes), but it bears noting that the vote was four to sustain and two to not sustain. In other words, while the ultimate outcome is that the allegation was sustained against Officer Brown only, there was ample consideration of whether other officers violated the bulletin, and four Commissioners believed Officer Tu did. Ms. Moore clearly could not be contained by a single officer, 5 but the Board's finding against Officer Brown does not constitute a belief that the officer should have single-handedly calmed her down.

3. The PRC's finding were timely delivered to Officer Brown.

The PRC sent Officer Brown and all other subject officers a "summary of findings" (the information required by PRC Regulation Section VII.E.1) dated February 26, 2014, which was within 7 calendar days of the last day of the hearings, February 20. It was intended to serve as the final summary, but PRC staff subsequently discovered an error in the reporting of two of the 16 findings. Staff therefore sent the subject officers a "revised summary of findings" dated March 6, 2014. The summary and revised summary were sent to the officers via personal delivery by PRC staff to Berkeley Police Department staff on the same date that those documents are dated. (See Declaration of Maritza Martinez, attached hereto.)

A bare allegation has been made that "the PRC's final summary of findings was delivered to Officer Brown on March 10, 2014," without citing to or attaching any evidence in support of this assertion, or stating who delivered the findings to her. If Officer Brown did not receive the

⁵ It is noted, however, that Ms. Moore weighed 347 lbs. according to the coroner (BOI binder, Tab 10, p. 117), still a substantial size but not the 400 lbs. Appellant repeatedly claims.

revised summary until March 10, that is not the fault of the PRC, which delivered them to the BPD on March 6.

In any event, the corrections to the findings involved Allegation 3 against Officer Mathis and Allegation 4 against Officer Gardner; in other words, neither correction related to an allegation made against Officer Brown. (Compare Exhibit 1 to Exhibit 2 of the Declaration of Ms. Martinez.) The sustained finding made against Officer Brown at issue here was reported accurately in the summary of findings delivered on February 26.

Finally, the Board's findings and the vote counts reported on the revised summary⁶ are wholly consistent with findings and vote counts announced in open session immediately following the Board's closed session deliberations on February 20. (Transcription found at BOI 283:3 - 284:23.) Of course, the publicly announced findings do not identify the officers by name, but the order in which the findings were announced are the same as the order in which they are reported in the revised summary of findings. A comparison of the publicly announced findings and votes with the revised summary of findings votes (Exhibit 2 to the Declaration of Ms. Martinez) shows that they are identical, and evidences that the Board did not improperly continue to consider the allegations after February 20, 2014.

Thus, the PRC acted in accordance with its regulations in timely delivering a summary of findings to Officer Brown, and the Board did not continue its deliberations beyond the adjournment of hearing on February 20, 2014.

Respectfully submitted,

Katherine J. Lee, Police Review Commission Officer

cc:

OAH – by electronic filing on September 11, 2014.

Internal Affairs – by personal delivery and email to Berkeley Police Department on September 11, 2014.

Subject Officer, G. Brown #16 –by personal delivery to Berkeley Police Department/Internal Affairs and email to subject officer on September 11, 2014.

Attorney Harry Stern of Rains Lucia Stern, PC – by U.S. mail and email on September 11, 2014.

⁶ The March 6 document is better characterized as a "corrected" summary, to reflect that an error had been made on the February 26 document. Its caption as a "revised" summary may have led to the erroneous inference that decisions had been changed since the issuance of the February 26 findings.

DECLARATION OF MARITZA MARTINEZ IN OPPOSITION TO APPEAL OF BOARD OF INQUIRY FINDINGS, COMPLAINT #2327 OAH CASE # 2014060886

I, MARITZA MARTINEZ, declare as follows:

- 1. I am employed by the City of Berkeley as an Office Specialist III for the Police Review Commission ("PRC") and have held this position for approximately 13 years. I have personal knowledge of the facts set forth in this declaration, and if called to testify could and would testify competently to the matters stated herein.
- 2. My duties at the PRC are to perform clerical and administrative tasks under the direction and in support of the PRC Officer and the PRC Investigator. I am the only permanent employee of the PRC with these responsibilities. Among other things, I prepare final copies of letters, memoranda, and other written communications from the PRC, and deliver such communications as directed and in accordance with the practices and procedures established by this office.
- 3. The practice for the delivery of confidential written communications from the PRC to the Berkeley Police Department ("BPD") is for me to personally hand-deliver such communications to the BPD. Usually, I deliver confidential communications related to complaints against Berkeley police officers in an interoffice mail envelope to a BPD staff person at the front counter of the Public Safety Building located at 2100 Martin Luther King, Jr. Way in Berkeley. Such deliveries must be made on a weekday before 3:00 p.m., when the front counter closes. On occasion, when a communication must be delivered after 3:00 p.m., or if I am directed to deliver a communication directly to the BPD Internal Affairs ("IA") Division, PRC staff will call ahead to IA to arrange for delivery to a member of the IA staff.
- 4. No matter what time of day I personally deliver a written communication to the BPD, it is the longstanding practice of PRC staff to ensure that the communication to be delivered is dated the same date as my delivery.

Declaration of Maritza Martinez OAH Case # 2014060886 Page 1 of 2 5. According to my notation in the PRC files, on February 26, 2014, I hand-delivered a

Summary of Findings in Complaint #2327 to Officer Gwendolyn Brown, along with a cover

letter from the PRC Officer of the same date, to the BPD. A true and correct copy of the

Summary of Findings and cover letter is attached hereto as Exhibit 1.

6. According to my notation in the PRC files, on March 6, 2014, I hand-delivered a Revised

Summary of Findings in Complaint #2327 to Officer Gwendolyn Brown, along with a cover

letter from the PRC Officer of the same date, to the BPD. A true and correct copy of the Revised

Summary of Findings and cover letter is attached hereto as Exhibit 2.

7. I do not have a present recollection of whether I delivered the Summary of Findings or

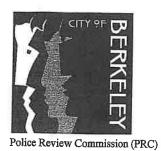
Revised Summary of Findings to the front counter of BPD or to a member of the IA staff.

However, I am certain I delivered those documents in one of those two ways on the dates stated.

I declare under penalty of perjury that the foregoing is true and correct. Executed in the City

of Berkeley on September 11, 2014.

Marita Martinez
Maritza Martinez



February 26, 2014

Officer Brown, Badge #16 Berkeley Police Department

RE: **Board of Inquiry Findings**

Complaint #2327

Dear Officer Brown,

Enclosed is a Summary of the Findings on the above-referenced complaint. The Findings Report will be sent under separate cover.

Please feel free to contact me at (510) 981-4950 if you have any questions.

Sincerely,

PRC Officer

Enc.: Summary of Findings

cc: Harry Stern, Rep.

File

mgm



SUMMARY OF FINDINGS – COMPLAINT #2327

FINDINGS DEFINITIONS

UNFOUNDED: The alleged act did not occur.

NOT SUSTAINED: The evidence fails to support the allegation, however it has not been

proven false.

EXONERATED: The alleged act did occur, but was lawful, justified and proper.

SUSTAINED: The allegation did occur and the action is not justified.

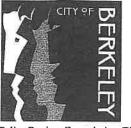
STANDARD OF PROOF: The standard of evidence is "clear and convincing"—more than preponderance, but less than beyond a reasonable doubt.

Please note that because this was a death case, 5 votes constituted the majority needed for the BOI to make a finding.

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
1:,	Improper Police Procedure	Brown	Exonerated	6-0
2.	Improper Use of Force (Improper Physical Contact)	Brown	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Tu	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Smith	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Gardner	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Mathis	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Kastmiler	Not Sustained	6-0
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Mathis	Not Sustained Unfounded	5
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Gardner	Unfounded	6-0

ALLEGATIONS	OFFICERS	FINDINGS	VOTE
Improper Police Procedure	Brown	Sustained	6-0
Improper Police Procedure	Tu	Sustained	4
		Not Sustained	2
		(No majority finding)	
Improper Police Procedure	Smith	Unfounded	6-0
Improper Police Procedure	Gardner	Not Sustained	5
		Unfounded	1
Improper Police Procedure	Mathis	Unfounded	6-0
Improper Police Procedure	Kastmiler	Not Sustained	6-0
Improper Arrest, Search,	Brown	Not Sustained	4
Seizure, Stop of Detention		Sustained	2
		(No majority finding)	
	Improper Police Procedure Improper Police Procedure	Improper Police Procedure Brown Improper Police Procedure Tu Improper Police Procedure Smith Improper Police Procedure Gardner Improper Police Procedure Mathis Improper Police Procedure Kastmiler Improper Arrest, Search, Brown	Improper Police ProcedureBrownSustainedImproper Police ProcedureTuSustained Not Sustained (No majority finding)Improper Police ProcedureSmithUnfoundedImproper Police ProcedureGardnerNot Sustained UnfoundedImproper Police ProcedureMathisUnfoundedImproper Police ProcedureKastmilerNot SustainedImproper Arrest, Search, Seizure, Stop or DetentionBrownNot SustainedSustainedSustained

mgm



Police Review Commission (PRC)

March 6, 2014

Officer Brown, Badge #16 Berkeley Police Department

RE: Board of Inquiry Findings

Complaint #2327

Dear Officer Brown,

Enclosed is a **corrected** Summary of the Findings on the above-referenced complaint. I apologize for the errors. The Findings Report will be sent under separate cover.

Please feel free to contact me at (510) 981-4950 if you have any questions.

Sincerely,

Katherine J. Lee PRC Officer

Enc.: Summary of Findings

cc: Harry Stern, Rep.

File

mgm



CONFIDENTIAL REVISED SUMMARY OF FINDINGS – COMPLAINT #2327

FINDINGS DEFINITIONS

UNFOUNDED: The alleged act did not occur.

NOT SUSTAINED: The evidence fails to support the allegation, however it has not been

proven false.

EXONERATED: The alleged act did occur, but was lawful, justified and proper.

SUSTAINED: The allegation did occur and the action is not justified.

STANDARD OF PROOF: The standard of evidence is "clear and convincing"—more than preponderance, but less than beyond a reasonable doubt.

Please note that because this was a death case, 5 votes constituted the majority needed for the BOI to make a finding.

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
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2.	Improper Use of Force (Improper Physical Contact)	Brown	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Tu	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Smith	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Gardner	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Mathis	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Kastmiler	Not Sustained	6-0
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Mathis	Unfounded	6-0
3.,	Improper Use of Force (Improper Use of Any Object: the Wrap)	Gardner	Unfounded	6-0

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
4.	Improper Police Procedure	Brown	Sustained	6-0
4.	Improper Police Procedure	Tu	Sustained Not Sustained	2
			(No majority finding)	
4.	Improper Police Procedure	Smith	Unfounded	6-0
4.	Improper Police Procedure	Gardner	Not Sustained	5
			Unfounded	1
4.	Improper Police Procedure	Mathis	Unfounded	6-0
4.	Improper Police Procedure	Kastmiler	Not Sustained	6-0
5,	Improper Arrest, Search,	Brown	Not Sustained	4
	Seizure, Stop or Detention		Sustained	2
			(No majority finding)	

mgm

Harry Stern (SBN 176854) Jonathan R. Murphy (SBN 286791) 1 RAINS LUCIA STERN, PC 2300 Contra Costa Boulevard, Suite 500 Pleasant Hill, CA 94523 3 Telephone: 925.609.1699 Facsimile: 925.609.1690 4 Email: hstern@rlslawyers.com 5 Attorneys for Gwendolyn Brown 6 CALOCA APPEAL 7 FROM THE FINDINGS OF THE CITY OF BERKELEY POLICE REVIEW COMMISSION 8 9 PRC COMPLAINT # 2327 IN THE MATTER OF 10 **GWENDOLYN BROWN** 11 **GWENDOLYN BROWN'S** A POLICE OFFICER, 12 APPEALING FROM THE FINDINGS OF PRE-HEARING BRIEF THE POLICE REVIEW COMMISSION 13 14 15 16 Citation Guide: 17 1. Board of Inquiry binder. Cited as: BOI binder tabs 1-10 page # 18 2. Officer testimony to Berkeley Police Department, BOI binder tab 10. 19 Cited as: "Officer Name" BPD page # 20 3. Officer testimony to Police Review Commission investigators, BOI binder tab 7 and 8. 21 Cited as: "Officer Name" PRC page # 22 4. Officer testimony before Board of Inquiry located in transcription of Board of Inquiry hearing. 23 Cited as: "Officer Name" BOI page # 24 5. Board of Inquiry findings report 25 26 27 28

I. INTRODUCTION

Officer Gwendolyn Brown appeals from the finding of the Berkeley Police Review

Commission ("PRC") Board of Inquiry ("Board") sustained finding against her regarding Allegation #

4 (improper police procedure) of PRC complaint number 2327 pursuant to Caloca v. County of San

Diego (1999) 72 Cal.App.4th 1209 and Caloca v. County of San Diego (2002) 102 Cal.App.4th 433.

The specific grounds on which Officer Brown contends the Board of Inquiry's decision is in error are as follows: The Board failed to properly address objections regarding sufficiency of the complaint; the Police Review Commission ("PRC") erred in their interpretation of their own regulations, denying Officer Brown a vital level of review of the allegations against her; the Board's findings fail to form an analytic bridge between the evidence and the Board's decision; the Board's finalized summary of findings were not delivered to Officer Brown until March 10, 2014, in violation of PRC regulations; the Board's findings were vague, contradictory to the evidence and are not supported by clear and convincing evidence.

II. STATEMENT OF FACTS

The Board summarized the facts of this case in their final findings report as follows:

On February 12, 2013, at approximately 11:49 p.m., Officers Brown, Tu, and Smith responded to a call for service at 2116 Allston Way. Mr. John Hayes reported a dispute between him and his roommate, Xavier Moore, and mentioned that Moore needed to "go to the psych ward." After arriving on scene, outside the building, there was discussion between Officer Smith and Officer Brown about a person named Xavier Moore having a \$10,000 warrant out of San Francisco.

Officer Brown and Officer Tu made contact with Ms. Moore at the door of her apartment and made observations about Ms. Moore's demeanor. Officer Smith was also present, but departed with Mr. Hayes once it was determined he had a warrant. Officer Brown informed Ms. Moore that she had a warrant for her arrest. Officer Brown, with the assistance of Officer Tu, and later Officer Smith, attempted to take Ms. Moore into custody. The officers reported that Ms. Moore physically resisted and that the officers subsequently ended up inside the apartment trying to restrain Ms. Moore and place handcuffs on her.

Officers Mathis, Gardner, and Kastmiler arrived and assisted the other three officers in their attempt to get Ms. Moore into custody. Officers were eventually able to place Ms. Moore in handcuffs. Officer Mathis, with the assistance of Officer Gardner, also placed a leg restraint on Ms. Moore. While the officers were trying to restrain Ms. Moore, she was on a mattress and was at times on her stomach. At some point, Ms. Moore was rolled onto her side. A short time later, Ms. Moore stopped breathing and her pulse stopped. Officer Tu performed chest compressions and Officer Brown checked the airway. The

. .

Berkeley Fire Department subsequently transported Ms. Moore to Alta Bates Hospital where she was pronounced dead.

Investigator Karen Easling of the Alameda County Sheriff-Coroner's Office reported her findings of Ms. Moore's death as follows: "On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. Beaver indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly."

(BOI Findings Report)

Xavier (Kayla) Moore was considerably larger than any of the officers on the scene, and was many times larger than a petite Officer Brown¹. Officer Smith estimated that Moore's weight approached 400 lbs. (Smith BPD 262). Also, the summary makes no mention the specificity provided by relevant Police Department policies and overlooks the detailed accounting of times and actions relayed by the officers during the three separate levels of interrogation they were subjected to following this tragic death.

The entire record combined with the multiple consistent statements given by the officers who were at the scene of the incident paint a clear picture: Moore overpowered Officers Tu and Brown, dragging them to the ground with her on a mattress landing on her belly; (Brown BPD 324, PRC 136, BOI 112:24; Tu BPD 151-152, PRC 181) Moore violently resisted the efforts of multiple officers to calm her down and restrain her violent movements and even after having her arms and legs bound Moore continued to resist; (Brown BOD 331, PRC 151, BOI 121-124; Tu BPD 151, PRC 181, BOI 42:7; Smith BPD 262; Gardner BPD 216; Kastmiller BPD 278, PRC 261, 263; Cardoza BPD 234, 237, PRC 303-4, 306) Brown was the first and only officer to monitor Moore's vitals and did so as soon as Moore had been sufficiently restrainted and such action was safe and appropriate; (Tu PRC 190, BOI 47:12; Philips BOI 205:12) Brown was the first to acknowledge Moore had stopped breathing; (Tu BPD 157, 160, PRC 187-88; Smith BOI 168:21; Gardner BPD 219, PRC 253; Kastmiller BPD 282; Philips BPD 301, PRC 284, BOI 198:9)Throughout the incident Moore was

¹ While Ms. Moore was transgender and identified herself as female, it is important to note that physically, Moore was an adult male considerably larger and stronger than Officer Brown.

moving and was never stationary on her belly; (Brown BPD 327, PRC 141, BOI 113:11; Tu BPD 154, PRC 183, BOI 41:5; Smith BPD 264, BOI 145:5; Gardner BPD 210, PRC 255, BOI 72:1; Kasttmiller BOI 227-228) almost immediately after Moore was sufficiently restrained (yet still resisting) Moore was rolled to her side; (Brown PRC 151, BOI 125:8; Tu BPD 157, PRC 187, BOI 44:16, 47:12; Gardner PRC 254; Kastmiller BPD 281, Philips PRC 289, BOI 198:5) less than a minute after Moore was rolled to her side, Brown, who had been observing Moore since she had been subdued, (Tu BOI 47:12; Philips BOI 205:12) observed that she had stopped breathing and officers immediately began life saving measures and advised the Berkeley Fire Department (who were already en route) that Moore had stopped breathing. (Brown BPD 336, PRC 152, BOI 126:14; Tu BPD 160, PRC 187, BOI 42:7; Gardner PRC 254; Kastmiller PRC 269, BPD 282; Philips BPD 301, BOI 205:12)

Bulletin 234 (BOI binder tab 9 page 361), which the Board sustained Officer Brown for violating, is an advisory bulletin not a general order, which alertsofficers of the dangers of positional asphyxia when a subject is "subdued or in transit;" the Bulletin refers to subjects who are "maximally restrained" and in patrol cars, as well as subjects who "placed" in a "face down" prone position for "long periods of time; the Bulletin treats the terms "on stomach" and "prone" as two different things, so PRC's statement that the two are synonymous is inconsistent with the very policy the PRC claims Brown has violated. Additionally, Bulletin 234 has a graphic showing an officer kneeling on the back of a subject who's face is flattened into the ground, (BOI binder tab 9 page 362) there record clearly contradicts Moore or the officers ever being in such a position and this graphic is conspiculously absent from the copy of bulletin 234 in the PRC's report. (BOI binder tab 2 page 29)

The record clearly shows that not only is bulletin 234 merely a cautionary advisory to officers about positional asphyxia and high risk individuals and not a "how to" mandating specifically how officers must handle what can be violent and chaotic confrontations, but the record also shows that notwithstanding the purpose of Bulletin 234, Officer Brown followed the advice of 234, not just to the best of her abilities, but to the letter of the Bulletin.

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Following a two day hearing, the Board found (regarding allegation 4 [improper police procedure] of complaint # 2327):

Improper Police Procedure (Officers Brown...)

Whether, during the process of physically taking Ms. Moore into custody, subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: "Placing restrained persons in a face-down prone position for long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs." (Officer Brown) Finding: Sustained (Vote 6 - 0)

Training and Information Bulletin 234 provides direction to Berkeley Police Officers on how to avoid "positional asphyxia." The bulletin states, in addition to the portion quoted above, "Individuals that are obese and/or have large bellies are high-risk candidates for sudden death due to positional asphyxia." The Board found that the most credible testimony established that Ms. Moore was prone (on her stomach) for most of the time that she was resisting, and that after she ceased resisting, with her hands cuffed behind her and her ankles in restraints, there was a period of minutes when she remained on her stomach and was not turned on her side. The Board did not give great weight to the testimony of Ofc. Brown, finding that her recollections were inconsistent in substantial part with the record and the recollections of other Officers, and that particular misrecollections by Ofc. Brown called into question her overall reliability of her memory of the events. As the lead officer, Ofc. Brown had the primary duty to follow the training and information bulletin, and she should have made certain that the period of time that Ms. Moore was prone on her stomach was not extended any longer than was absolutely necessary. Also, Ofc. Brown should have constantly monitored Ms. Moore's vital signs. The Board found that Ofc. Brown did not follow the training and information bulletin because she failed to turn (or to have other officers help her turn) Ms. Moore to her side as soon as practicable

This finding by the board invents facts not in the record, misstates wording and direction of the relevant Bulletin (234), and makes broad and vague assertions about the facts of this case and the credibility of witnesses without ANY citation or support from the record.

It is unfathomable that the Board could so carelessly accuse Officer Brown of causing this person's death, when the findings of the Police Department, the Coroner's Office and the PRC's own investigation clearly show that Moore's death was the unavoidable consequence of a morbidly obese person with a heart condition, taking a lethal dose of multiple illegal and dangerous drugs and then fighting with her roommate and then the police.

1. PRC Failed to address objections regarding sufficiency of the complaint.

On August 23, 2013, Counsel for Officer Brown, Harry Stern, reiterated the objection of Berkeley Police Association President Chris Stines, that the Police Review Commission had not met its own standards regarding "sufficiency of a complaint" for the allegations against the officers in this matter. (PRC Regs II(4)) that section states that "Complaints must allege facts that, if true, would establish that misconduct occurred." (BOI packet tab 1)

Allegation 4 (the allegation sustained against Officer Brown), the applicable policy, Information Bulletin #234, deals with subjects body position while "subdued or in transit." Bulletin #234 advises officers that they should "avoid" "placing restrained persons in a face-down prone position for long periods" and that if a person needs to be "placed" in a face-down position for a long time, then their vitals should be constantly monitored. All testimony indicated that the officers did not "place" Moore in a face down position, rather Moore, an extremely strong 400lb man, overpowered officers Tu and Brown and dragged them to the ground in that position. Further, all testimony indicated that while Moore was in a partially prone and not faced down position, Brown, who was monitoring Moore's vitals, exhibited concern and with the aid of other officers moved Moore further on her side where Moore appeared to be breathing and moving. Less than a minute after being moved to her side, again Brown, who was monitoring Moore, was concerned that Moore was no longer breathing, she checked her pulse and then called for medical assistance and the officers immediately began CPR. The allegations of specific officer conduct, taken from the officers' statements and reports, if true did not amount to a violation of informational bulletin #234.

Understandably, Mr. Stern asked for a response from the PRC as to why they were pressing forward with this matter without having made this basic prima facie showing. Instead the PRC responded by stating that the "sufficiency of complaint" section (II(4)) does not apply here because this complaint was filed under section II(3) "unavailability of complainant." Is it also the PRC's assertion that if an actual member of the public had brought a complaint here that the sufficiency of complaint section would not apply because it was brought under section II(1)? There is nothing in the regulations indicating that the basic prima facie standard represented by section II(4) applies only to

some complaints but not others. The two forms of bringing a complaint, those brought by a complainant and, as here, where no complainant is available, and the appropriate timelines for bringing such actions are discussed in section II subsections 1 through 3. These three sections are immediately followed by section II(4) "sufficiency of complaint," which states "[c]omplaints must allege facts that, if true, would establish that misconduct occurred." This is clearly a complaint, in fact, this matter is referred to as "complaint #2327" in the PRC "supplemental report of investigation and the PRC findings here appealed from. The PRC's assertion that the their own regulation determining the sufficiency of complaints does not apply to this complaint is ridiculous and completely unsupported by the text of the PRC regulations. The PRC's refusal to even hear Officer Brown's objections made by and through her attorneydenied Officer Brown a vital level of review of the allegations against her, as promised by the PRC regulations.

2. THE BOARD'S FINDINGS FAIL TO FORM AN ANALYTIC BRIDGE BETWEEN THE EVIDENCE AND THE BOARD'S DECISION

The Board's finding fails to make a single citation to any portion of the roughly 800 page packet that was provided to each member of the Board before the hearing or to any specified testimony by any specified officer who testified. Additionally, the Board's findings contradict the record, and create facts not in or supported by the record.

The vague nature of the Board's findings render them insufficient to enable the parties to determine the basis for review or the basis for the agency's action, in that they fail to form an analytic bridge between the evidence and the agency's decision. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.

Under *Topanga* the Boards findings would not meet the minimum legal requirements of competency for an administrative adjudicative body based of any standard of proof. Therefore, the Boards findings certainly cannot be support by the high threshold of "clear and convincing" evidence required here.

3. THE BOARD'S FINDINGS WERE VAGUE, CONTRADICTORY TO THE EVIDENCE AND ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

The PRC findings report dated March 21, 2014 sustained Officer Brown on allegation 4 "improper police procedure." The testimony of the officers, the only witnesses who testified at the board of inquiry, has gone unchanged from their initial reports to their statements to BPD to their statements to PRC investigators, in fact, each officer incorporated and adopted their prior statements as their testimony before the board of inquiry, adopting those statements as their true and best recollection of the events of February 12, 2013. (Tu BOI 22:4, Garner BOI 67:24, Smith BOI 135:5, Philips BOI 190:16, Mathis BOI 213:19, Kastmiller BOI 226:18, Cardoza BOI 233:25) The only officer not afforded the opportunity to rely on their previous statements by the board was Officer Brown. As discussed above these statements clearly show that allegation 4 does not even meet the threshold requirements of the "sufficiency of a complaint" under PRC regulations, let alone the clear and convincing standard that the Board should have properly applied here. In fact, in their findings, which purport to be supported by clear and convincing evidence, the Board fails to identify a single piece of specific evidence that supports their findings, instead relying on vague references and unsupported assertions that are inconsistent with or completely contradictory to the evidence in the record.

In their findings the Board states that "Ms. Moore was prone (on her stomach)." The Board has asserted its own definition of the word "Prone" here, equating it with being on ones stomach. The Boards definition of prone is contrary to the very policy they are relying on to sustain this allegation (Bulletin 234 - BOI binder tab 9 page 361) and its description of Moore's body position is contrary to the testimony of the officers, who were the sole witnesses to this incident. The testimony of all witnesses, which went unchanged throughout their reports and various interviews and which was adopted by each of those witnesses as their testimony at the hearing, clearly demonstrates that Moore was not placed on her stomach, but rather overpowered officers and drug them to the ground in that position (Brown BPD 324, PRC 136, BOI 112:24; Tu BPD 151-152, PRC 181) and that she was constantly moving, partially on her side, on a mattress and that her head was not facing down. (Brown

BPD 327, PRC 141, BOI 113:11; Tu BPD 154, PRC 183, BOI 41:5; Smith BPD 264, BOI 145:5; Gardner BPD 210, PRC 255, BOI 72:1; Kasttmiller BOI 227-228) Further, Information Bulletin 234 states that "positional asphyxia may occur when restrained suspects are *placed* (again, Moore was never placed in this position) in a prone position for a period of time, *particularly stomach down*." The very policy the Board is relying on here clearly states that there is a difference between "prone" and "stomach down," show that a person can be "prone" but not "stomach down." The Boards attempt to equate these two terms completely misstates the policy and misrepresents the testimony of the officers.

In addition to the Board's misrepresentation of the meaning of the word "prone," they found that Moore was in this position "for most of the time that she was *resisting*." Information Bulletin 234 states in its introduction that it deals with "body position when *subdued* or *in transit*." Officer Brown, who weighs roughly a quarter of what Moore weighs, was in no position to control the position of Moore's body while she was violently resisting nor was she required to by policy. The policy deals with how subjects' bodies are "placed" by the officers after they have stopped resisting and are compliant. The Boards implementation of this policy is ridiculous; bulletin 234 clearly does not impose such an impossible duty as to require a 100 lb officer, like Brown, to control the body position of a 400lb man who is violently resisting. (All officers testified before the BPD, PRC and BOI that Moore was violently resisting throughout the incident even after her arms and legs were restrained)

The Board purports that Moore was left face down for a "period of minutes" and that during this time no one was checking Moore's vitals. The policy merely says that leaving a subject in such a position for "long periods of time" should be "avoided." The Board has offered nothing to support their inaccurate assertion that Moore spent a "period of minutes" on her "stomach," and failed to demonstrate that even their erroneous figure, "a period of minutes," was in excess of the "long periods of time" envisioned by the policy. The testimony of the officers clearly shows that Moore was not face down but moving, looking to her side and partially on her side and that she spent mere moments in this position, after ceasing her violent resistance, before she was rolled more completely on her side by the officers. (Moore rolled immediately to side after subdued: Brown PRC 151, BOI 125:8; Tu BPD 157,

PRC 187, BOI 44:16, 47:12; Gardner PRC 254; Kastmiller BPD 281, Philips PRC 289, BOI 198:5)

No officer there, including Officer Brown was capable of moving Moore single handedly. From that position it took less than one minute for Moore to actually stop breathing at which point Officer Brown, who was monitoring Moore, assessed that she was not breathing and did not have a pulse and immediately announced her condition and need for medical assistance. (Brown BPD 336, PRC 152, BOI 126:14; Tu BPD 160, PRC 187, BOI 42:7; Gardner PRC 254; Kastmiller PRC 269, BPD 282; Philips BPD 301, BOI 205:12) Brown began checking Moore's vitals as soon as she was rolled to her side. (Tu BOI 47:12; Philips BOI 205:12) Furthermore, the PRC omitted from their investigation report (Tab 2 of Board of Inquiry binder) the graphic on the second page of informational bulletin #234 demonstrating the position to be avoided, this image can be found on page 362 under tab 9 of the Board of Inquiry binder) In this image shows a subject laying completely flat, chest and stomach squarely on the ground, and an officer with his knee on the subjects back compressing the subject's rib cage. There was zero testimony at any point in any investigation into this incident that revealed that Moore or the officers were in any such position, in fact, the officers were specifically asked if they observed such body positioning and they all testified that they had not.

The Board's findings clearly acknowledge that Officer Brown was physically incapable of moving Moore, who was very large, strong and under the influence of a large dose of illegal drugs. Furthermore, the evidence shows that Officer Brown was monitoring Moore's vitals for the brief moments she had stopped resisting and was actually "subdued" (the situation envisioned by Bulletin 234). (Tu PRC 190, BOI 47:12; Philips BOI 205:12) Brown was the first officer to notice when Moore appeared to stop breathing. (Tu BPD 157, 160, PRC 187-88; Smith BOI 168:21; Gardner BPD 219, PRC 253; Kastmiller BPD 282; Philips BPD 301, PRC 284, BOI 198:9) Ironically, the Boards findings exclusively fault, for failure to move Moore and to monitor her vitals, the only officer the evidence clearly shows was monitoring Moore's vitals and who was physically incapable of moving her massive body. The only rationale the Board offered for this logically inconsistent argument is that Brown was the "lead" officer, arguing that "[a]s the lead officer Ofc. Brown had the primary duty to follow the training and information bulletin (#234)." There is absolutely nothing contained in

the actual version of Berkeley Police Department Information Bulletin #234 (BOI Binder tab 9 page 361) nor the abbreviated version published by the PRC that indicates that it is the "lead" officer's role to follow the advisements of Bulletin #234. No officers testified to such a fact at any level of this investigation or at the hearing. Rather, the Policy states that "[i]t is important that all Berkeley Police Department personnel understand that preexisting risk factors, combined with the subjects body position when subdued or in transit, Can compound the risk of a sudden death." The rule the Board purports applies (that it is the Lead Officer's duty to follow Bulletin #234) is contrary to the plain language of the policy. Additionally, the Board asked Officer Smith if this meant that Brown was "in charge" to which Smith responded that it meant that "she (Brown) was the one handling the call" (Smith BOI 145:5)

Officers often respond to chaotic calls, such as this one was, and it is impossible to anticipate what task the circumstances will require which becomes the responsibility of the "lead" officer. It is possible the "lead" officer will be injured, killed or otherwise incapacitated. That is why the policy is addressed "all Berkeley Police Department personnel" and in no way indicate that this would become the sole responsibility of the "lead" officer. Considering the physical differences between Officer Brown and Moore and the fact that the evidence indicates that Officer Brown was the officer most diligently monitoring Moore's vitals, it defies reason and is completely unfair that the Board chose to single out Officer Brown as having violated this bulletin.

The Board's findings vaguely state that they relied on "the most credible testimony" and that Officer Brown's statements were not credible but refuse to say which statements or why. The Board rationalizes this claim by stating that Brown's unspecified statements were "inconsistent to the record and the recollections of other officers," however, the findings fail to identify these "other officers" or to specify any section of the record or statement of any witness. The reports made by the officers and their statements to BPD and to the PRC corroborate Officer Brown's testimony. The witnesses all incorporated those previous statements as their testimony at the board of inquiry. It is hard to imagine what statement at hearing the Board is using to justify this finding.

Regardless of the Board's reasoning, no statement, taken in or out of context, when given over a year after the events in question, can be considered more probative that the long chain of consistent statements given by the witnesses to multiple investigations into this incident. It is clear that the Board's finding on Allegation #4 cannot be supported by clear and convincing evidence.

The PRC's finalized summary of findings was not delivered to Officer Brown until March 10.

The PRC's finalized summary of findings was not delivered to Officer Brown until March 10, 2014, in violation of PRC regulations.

Under PRC regulations section VII(E)(1) "[w]ithin 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing." The final day of the hearing was February 20, 2014, however, the PRC's final summary of findings was delivered to Officer Brown on March 10, 2014. There was an earlier version that may or may not have been submitted in complete form to the subject officers, however, that copy did not represent the final findings of the Board of Inquiry. The earlier delivered and erroneous summary included differed tallies of the anonymous votes of the Board than the final version. There is no procedural guarantee that the Board did not inappropriately consider these allegations until well past the due date for their findings. Additionally, there is clear and obvious evidence that the actual findings were not delivered to Officer Brown until 18 days, not 7, after the final day of the hearing, in clear violation of the PRC's own regulations.

IV. CONCLUSION

The Board's failure to cite a single shred of evidence left Officer Brown to scour the entire record looking for some portion of it which supported the Board's assertions and none could be found.

Brown was under no greater duty to follow bulletin 234 than any other officer on the scene. That being said, Brown was the first and only officer to monitor Moore's vitals once she had ceased her violent resistance.

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Bulletin 234 does not in any way command or even advise that officers refrain from keeping or allowing suspects to remain on their stomachs while there are violently resisting and being taken into custody. This is basic officer safety, a resisting suspect on his or her back is considerably more dangerous to officers than a suspect on their stomach. Bulletin 234 addresses what officers do with suspects after they have been "subdued" and are either in a police vehicle or awaiting transportation.

Moore spent minutes fighting with officers and mere seconds subdued before she stopped breathing. Clearly, Moore was not Subdued and on her stomach for the "long periods" envisioned by Bulletin 234. Likely, although it is not relevant to Bulletin 234, the entire struggle which last a few minutes, would not even approach the "long periods" envisioned by the Bulletin.

While Moore was resisting it was impossible to monitor her vitals, it also would have been pointless because a suspect who is kicking and screaming is also breathing. As soon as Moore had been at least partially restrained and subdued, Brown began monitoring her vitals and within seconds, informed the other officers that Moore was having difficulty breathing. The Officers immediately jumped into action doing everything in their power to save Moore's life, but they were unable.

This was a tragic incident, and all officers involved wish that they could have been able to save Moore's life. But the fact of the matter is that, as the Coroner's Office summarized, Moore was morbidly obese, suffering from a heart ailment and under the influence of lethal dose of multiple illegal drugs when she chose to engage several police officers in a struggle. There was nothing these officers could have done to divert the outcome of the chain of events which Moore had set in motion.

This incident was a tragedy and a traumatic experience for the officers on scene. However, fault for this tragedy cannot be shouldered by the men and women who did everything in their power to save this man's life.

Dated: August, 15 2014

Respectfully submitted,

RAINS LUCIA STERN, PC

By: Harry Stern

Jonathan Murphy

Attorneys for Gwendolyn Brown

RLS RAINS LUCIA STERN, PC

Harry S. Stern Attorney at Law HStern@RLSlawyers.com

April 3, 2014

VIA ELECTRONIC MAIL [MMEEHAN@CI.BERKELEY.CA.US] & FIRST CLASS MAIL

Internal Affairs Unit
Berkeley Police Department
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704

Re: Officer Gwendolyn Brown's Caloca Appeal against the PRC's Sustained Finding Regarding Allegation #4 of Complaint #2327

To Whom It May Concern:

This office represents Officer Gwendolyn Brown in the above referenced matter. Please accept this letter as Officer Brown's Notice of Appeal and Request for Administrative Appeal of the Board of Inquiry's sustained finding against her regarding Allegation # 4 of the complaint (improper police procedure) pursuant to *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433. The specific grounds on which Officer Brown contends the Board of Inquiry's decision is in error are as follows: The Board failed to properly address objections regarding sufficiency of the complaint; the Police Review Commission ("PRC") erred in their interpretation of their own regulations, denying Officer Brown a vital level of review of the allegations against her; the Board's findings fail to form an analytic bridge between the evidence and the Board's decision; the Board's findings fail to form any of findings were not delivered to Officer Brown until March 10, 2014, in violation of PRC regulations; the Board's findings were vague, contradictory to the evidence and are not supported by clear and convincing evidence.

Sincerely,

RAINS LUCIA STERN, PC

Harry S. Stern

HSS:my

cc:

Gwen Brown

Katherine Lee, PRC Director Chris Stines, BPA President

CITY OF BERKELEY

REGULATIONS

For Handling Complaints Against Members of the Police Department

Including all amendments through July 9, 2014

POLICE REVIEW COMMISSION

POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704 510.981.4950 TDD: 510.981.6903 FAX: 510.981.4955 e-mail: prc@cityofberkeley.info website: www.cityofberkeley.info/prc/

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BERKELEY POLICE REVIEW COMMISSION

REGULATIONS FOR HANDLING COMPLAINTS AGAINST MEMBERS OF THE POLICE DEPARTMENT

(Adopted May 13, 1975. Amended August 8, 1984; April 30, 1990; May 26, 1993; November 7, 2007; July 14, 2010; July 9, 2014)

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

I. GENERAL

A. <u>Application of Regulations-Confidentiality of Complaint Proceedings</u>. The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.

- B. Definitions. The following definitions shall apply in these regulations:
 - Administrative Closure: Complaint closure before a BOI hearing. Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint.
 - 2. Allegation: A specific assertion of police misconduct by a complainant or the Commission.
 - 3. <u>Board of Inquiry (BOI)</u>: Three Commissioners impaneled to hear and render findings on complaints; a BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.
 - BOI Hearing Packet: Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.
 - 5. <u>Commissioner</u>: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.
 - 6. <u>Complaint</u>: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee (including employees of the Public Safety Communications Center) while engaged in official duties.
 - 7. <u>Complainant</u>: Any person who files a complaint with the PRC; is considered a witness to the complaint during a BOI hearing.
 - 8. <u>Duty Command Officer (DCO):</u> A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.
 - 9. <u>Findings Report</u>: Summary of the BOI's findings, provided to the City Manager and the Chief of Police within 30 calendar days of the hearing.
 - 10. Investigation: A formal process of resolving complaints.
 - 11. <u>Mediation</u>: A process of resolving complaint0s informally, without investigation, in conjunction with a local mediation agency, if both the complainant and the subject officer agree. Mediation may be considered in all cases except those involving the death of an individual.
 - 12. <u>Policy Complaint</u>: A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.
 - 13. <u>PRC Investigator</u>. A person employed by the City Manager and assigned to the PRC to investigate complaints.
 - 14. <u>PRC Officer</u>. A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.
 - 15. <u>Report of Investigation</u>: Report issued within 75 calendar days of the filing date of the complaint.

- 16. <u>Subject Officer</u>. A sworn BPD officer, or other BPD employee, against whom a complaint is filed.
- 17. <u>Summary Dismissal</u>: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.
- 18. <u>Supplemental Report of Investigation</u>: Report issued no later than 10 business days before a BOI hearing, as part of the BOI Hearing Packet.
- 19. Toll: Stop the running of the clock/investigation timeline.
- 20. <u>Witness Officer:</u> A sworn BPD officer, or other BPD employee, who has personal knowledge of events described in a complaint, but is not the subject officer.

II. INITIATING THE PROCESS

A. Filing a Complaint

1. Complaint Form

Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant. Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

2. Filing Period

- a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to file in a timely fashion. The PRC Officer or Investigator will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.
- b. For late-filed complaints, the subject officer(s) are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or the Chief of Police.

3. Unavailability of Complainant

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

4. Sufficiency of Complaint

- a. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC Officer or Investigator to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. IV(A)(2)), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation.
- b. Policy complaints will be brought to the Commission, within 30 calendar days of filing, at a regularly scheduled meeting for discussion or action. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.

5. Right to Representation

Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but an attorney is not required. If PRC staff is notified that a complainant or subject officer is represented by an attorney, PRC staff shall thereafter send copies of any materials and notification provided to the complainant or the subject officer(s) to their representative.

B. Mediation

1. Election

- a. The PRC Officer or Investigator shall, prior to, or concurrent with, the filing of a complaint, provide the complainant with information about the difference between mediation and an investigation. PRC staff shall make all reasonable efforts, and document their efforts, to contact the complainant within 2 business days of the filing of the complaint to discuss the complainant's preference, provided the complaint is appropriate for mediation.
- b. If the complainant elects mediation, the PRC staff shall provide the subject officer with a copy of the complaint and notify him or her of the complainant's election, within 10 calendar days.
- c. If the subject officer agrees to mediation, s/he shall notify the PRC Officer or the Investigator within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the mediation break down and the mediator determine that the officer is acting in bad faith.¹

¹ Bad Faith: An intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others. (West's Encyclopedia of American Law, edition 2, Copyright 2008).

2. Conclusion

- a. Mediation may continue as long as the mediator feels that progress is being made; it may be terminated if the mediator determines that either party is acting in bad faith. If the mediator terminates the mediation because the subject officer is acting in bad faith, the complainant will be advised of his/her right to proceed with the PRC investigation and hearing. If the mediator terminates the mediation because the complainant is acting in bad faith, the PRC Officer or Investigator shall submit the complaint to the Commission for administrative closure.
- b. If mediation is successfully concluded, the mediator will provide written notice to the PRC and the BPD within 5 calendar days of the last mediation session. The PRC will consider the matter resolved and the complaint will be submitted for administrative closure.

3. Records retention

Mediation records will be destroyed 1 year from the date of election by the complainant.

III. COMPLAINT INVESTIGATION

A. Notice and Availability of Complaint

1. Notice of Allegations

Within 20 business days of the date a timely-filed complaint is received at the PRC office, unless it is submitted to the Commission for administrative closure or the complainant elects mediation, the Investigator shall prepare a Notice of Allegations. The Notice of Allegations shall be sent in hard copy and, when feasible, electronically, to the complainant, the Chief of Police and/or BPD Internal Affairs, and, by delivery to the BPD, each identified subject officer. If the Notice of Allegations is not issued in the time required, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

2. Availability of Complaint

The complaint shall be available at the PRC office, and a copy shall be provided to the subject officer with the Notice of Allegations. PRC staff shall maintain a central register of all complaints filed.

B. Investigation Process

1. Nature of Investigation

The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint;² collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations, Report of Investigation, and a Board of Inquiry Hearing (Hearing) Packet.

² Recordings of interviews shall be kept for 100 days or until the Board of Inquiry's Findings Report has been provided to the City Manager, whichever is later.

2. Time for Investigation

- a. The investigation must be completed within one year, unless a Government Code Sec. 3304(d) exception applies.
- b. If the investigation is not completed within one year, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the case shall be closed, unless the Commission determines that a Government Code Sec. 3304(d) exception applies.
- c. If a Government Code Sec. 3304(d) exception to the one-year limitation period applies, the BOI Hearing Packet shall state the applicable exception.

3. Pending Criminal Action

If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not undertake an investigation until the criminal matter has been adjudicated or dismissed. All time limitations applicable to the processing of PRC complaints shall be tolled during the pendency of any such criminal proceedings. Within one week of the filing of the complaint, or as soon thereafter as possible, the PRC Officer shall determine the status and anticipated resolution of the criminal proceedings by communicating, in writing, directly with the District Attorney's Office.

C. Interviews

1. Conduct

Interviews should be conducted in a manner that will produce a minimum of inconvenience and embarrassment to all parties. BPD officer interviews must be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3303. When possible, BPD employees should not be contacted at home, and others should not be contacted at their places of employment.

2. Notice

PRC staff shall notify subject and witness officers at least 2 weeks before the scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. Follow-up notices will be sent at least one week before the scheduled date. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.

3. Exercise of Constitutional Rights

Subject officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit B). While all BPD employees have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the PRC regarding conduct and observations that arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not be considered by the Commission in its disposition of a complaint.

D. Reports

1. BPD Reports

- a. The PRC should receive un-redacted police reports from BPD once the PRC Officer has established and implemented security and chain of custody procedures that satisfy the City Manager and the Chief of Police. Police reports will be redacted when distributed to BOI Commissioners, but un-redacted reports will be available at the PRC Office for BOI Commissioners to review.
- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - (1) The original Communications Center tapes relevant to the complaint.
 - (2) All police reports, records, and documentation.
 - (3) Names, addresses, telephone numbers, and statements of all witnesses.

2. Report of Investigation

- a. The PRC Officer or the Investigator shall assemble all relevant information in a confidential Report of Investigation. The Report shall list the allegations, provide a summary of the complaint, provide the applicable BPD, state or local rules and regulations, and include a copy of the interview transcripts.
- b. The Report shall be provided to the subject officers, with a copy to the Chief of Police, within 75 calendar days of the date of filing of the complaint. If the Report is not timely, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

IV. CONFIDENTIALITY OF PERSONNEL MATTERS

A. Responsibilities of PRC Commissioners

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

B. Conduct

- 1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.
- 2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

V. PRE-HEARING COMPLAINT DISPOSITION

A. Administrative Closure

Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- a) Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- b) Request for closure by complainant.
- c) Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- d) Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means (e.g. mediation)
- e) Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a Board of Inquiry hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- f) Failure to timely issue the Notice of Allegations, as set forth in Section III(A)(1).
- g) Failure to timely issue the Report of Investigation, as set forth in Section III(D)(2)(b).
- h) Failure to timely complete its investigation, as set forth in Section III(B)(2).
- i) A policy complaint that has been considered by the Commission.

2. Procedure

A complaint may be administratively closed by a majority vote of Commissioners during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than 5 calendar days prior to said meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

A policy complaint may be administratively closed by a majority vote of Commissioners during open session at a regularly scheduled meeting.

3. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

B. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before a hearing. Upon receipt of a "no contest" response, the PRC Officer or Investigator shall refer the file and the response to the City Manager and the Chief of Police for appropriate action.

C. Waiver of Hearing

Either the complainant or the subject officer may request that findings be rendered without a hearing. If both the complainant and the subject officer sign a written waiver of their right to a hearing, a Board of Inquiry may issue findings based on interview statements and documentary evidence.

VI. BOARDS OF INQUIRY

A. Composition

A Board of Inquiry (BOI) shall consist of 3 Commissioners, who shall designate one of them to be Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of 6 Commissioners, the Commission shall sit as a Board of the whole, with a minimum of 6 Commissioners.

B. Designation

1. Obligation to Serve

Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the factual dispute to be heard. PRC staff will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period. A BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

2 Unavailability of BOI Member

If any member of a Board of Inquiry becomes unavailable, s/he shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within 7 calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Section 4(C) below. The notice of challenge of a substituted Commissioner must be made at least 3 business days prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the hearing.

3. Effect of Continuance

If a hearing is rescheduled due to the unanticipated unavailability of the complainant(s), the subject officer(s) or the complainant's or subject officer's attorney, the case may be reassigned to another Board of Inquiry. The Board composition shall not change once a hearing has been convened, however.

C. Challenge of BOI Commissioner

1. Basis for Challenge

A Commissioner who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

- a) a familial relationship or close friendship with the complainant or subject officer;
- b) witnessing events material to the inquiry;
- c) a financial interest in the outcome of the inquiry;
- d) a bias for or against the complainant or subject officer.

2. Procedure

- a. Within 7 calendar days from the date of mailing of the Board of Inquiry hearing packet, which includes the names of the Commissioners constituting that Board, the complainant or the subject officer(s) may file a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest.
- b. The PRC Officer or his/her designee shall contact the challenged Commissioner as soon as possible after receipt of the challenge.
- c. If the Commissioner agrees, PRC Officer or his/her designee shall ask another Commissioner to serve.
- d. If the Commissioner does not agree that the challenge is for good cause, PRC Officer or his/her design shall poll the other members of the Board and, if both agree that the challenge is for good cause, shall inform the challenged Commissioner and ask another to serve.
- e. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be part of the record of the complaint.

3. Replacement of Commissioners

Any Commissioner who is unable to serve for any reason shall be replaced by another Commissioner, except in cases involving a death.

D. Responsibilities of BOI Commissioners

1. Confidentiality

a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.

b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

2. Conduct

In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

3. Violation

- a. A violation of Sections VI.D.1. or VI.D.2. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.
- b. In addition, a Commissioner or PRC staff may agendize an alleged violation of Sections VI.D.1. or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.

E. Function

- 1. The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.
- The BOI members shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding dismissed citations.

F. Subpoena Power

The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

VII. HEARINGS

A. Scheduling and Notice

1. BPD Schedules

The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation, or authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.

2. Notice

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide written notice of the date, time and location of the hearing, and the composition of the Board of Inquiry, to the complainant, the subject officer(s), any representatives, civilian witnesses, witness officers, the BOI members and the Chief of Police.

B. Board of Inquiry Hearing Packet

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide a Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

- 1. The BOI members shall receive a Hearing Packet that contains:
 - a) The PRC Officer's or the PRC Investigator's recommendations, if any, concerning summary disposition or procedural matters.
 - b) A copy of the complaint.
 - c) The Supplemental Report of Investigation, which includes a summary of the complaint, a summary of the interview statements, the applicable BPD, state or local rules and regulations, and a brief analysis.
 - d) Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
 - e) A copy of all the interview transcripts.
- 2. The subject officer(s), the officer's representative, the DCO, and the Chief of Police shall receive a Hearing Packet that contains the documents listed in Section V(B) (1)(a, c, d) above; a copy of the complaint (Section V(B) (1)(b)) and the interview transcripts (Section V(B) (1)(e)) shall be provided only if they have not been provided previously.
- 3. The complainant shall receive a Hearing Packet that contains:
 - a) A copy of the complaint.
 - b) Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
 - c) A copy of the complainant's interview transcript.
- 4. Each witness shall receive a copy of his/her interview transcript.

C. Pre-Hearing Motions

1. Newly Discovered Evidence and/or Witnesses

The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the PRC Officer or Investigator no later than 10 business days before the scheduled

hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. The PRC Officer or Investigator shall inform the BOI of the newly discovered evidence or witnesses as soon as possible.

The BOI shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and the PRC Officer or Investigator shall notify both the complainant and the subject officer of the Board's decision.

2. Procedural Issues

The complainant and subject officer shall raise any procedural issues, by submitting them to the PRC Officer in writing, no later than 5 business days before the scheduled hearing date. Procedural issues can include, but are not limited to, the expiration of the 1-year limitation period and/or whether an officer should testify.

3. Summary Disposition

a. Summary Dismissal

After reviewing the Hearing Packet, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit, by unanimous vote, on the recommendation of the PRC Officer or Investigator, its own motion, or that of the subject officer. Parties to the complaint shall be notified of the summary dismissal, and may appear to argue for or against summary disposition.

b. Summary Affirmation

After reviewing the Hearing Packet, the BOI may summarily sustain any or all of the allegations that it finds clearly meritorious, by unanimous vote, on the recommendation of the PRC Officer or Investigator, or its own motion. The subject officer shall be notified of the summary affirmation, and may appear to object to the summary affirmation, which shall not occur over the subject officer's objection.

4. Continuances

- a. A continuance may be granted by a majority of the BOI. In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
- b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises.
- c. A continuance shall not be granted in the absence of good cause.
- d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the moving party can demonstrate a grave emergency that will unduly prejudice him or her if the hearing is not continued.
- e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

D. Procedure

- 1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.
- 2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.
- 3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.
- 4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.
- 5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.
- 6. The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.
- 7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements, and will then answer questions from the subject officer(s) or the subject officer's representative(s) and the Commissioners. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.
- 8. The subject officers and any witness officers will be called into the hearing room to testify separately. Each officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.
- 9. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. "Hearsay evidence" is evidence of a statement that was made by someone other than the witness testifying at the hearing.

Evidence shall be taken in accordance with the following provisions:

- a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.
- b) Oral evidence shall be taken only under oath.
- c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.
- d) The Chairperson shall exclude unruly or disruptive persons from the hearing.
- e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.
- f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
- g) If the BOI needs additional evidence to reach its findings, it will continue the hearing to a future date, unless the parties agree to allow the Board to receive such material in writing without reconvening.
- h) If upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.

VIII. DELIBERATION AND FINDINGS

A. <u>Deliberation</u>

After the hearing has been concluded, the Board will deliberate outside of the presence of the complainant, the subject officer(s), and any witnesses or representatives. The Board shall not consider any information not received in the Hearing Packet or during the hearing.

B. Majority Vote

All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

C. Standard of Proof

No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

D. Categories of Findings

- 1. If the evidence shows that the alleged act did not occur, the finding shall be "Unfounded".
- 2. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained".
- 3. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated".
- 4. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be "Sustained".

E. Findings Report and Notification

- 1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.
- 2. Within 30 calendar days of the hearing, the PRC office shall submit a Finding Report, together with the Hearing Packet, to the City Manager and the Chief of Police.

F. Petition for Rehearing

- 1. Within 15 calendar days of the mailing of the Board's findings, any party to the complaint may petition in writing for a rehearing. A rehearing may be granted only if the applicant establishes that: there is newly discovered, material evidence that, with reasonable diligence, could not have been discovered and produced at the hearing; or, that there was substantial procedural error likely to have affected the outcome.
- 2. Within 21 calendar days of the receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 35 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.

IX. AMENDMENT AND AVAILABILITY OF REGULATIONS

- Amendments to the Regulations for Handling Complaints Against Members of the Police Department (Regulations) require a majority vote of the Commission.
- Amendments shall be distributed to Commissioners, the Berkeley Police Association, the City Manager, the City Attorney, and the Chief of Police.
- The PRC office shall maintain a complete set of the current Regulations.

SUBJECT OFFICER TESTIMONY

MEMORANDUM

July 20, 1990

To:

Ronald D. Nelson, Chief of Police

Police Review Commission Berkeley Police Association

From: Michael F. Brown, City Manager

Subject: SUBJECT OFFICER TESTIMONY

The purpose of this memorandum is to set forth my policy regarding testimony by accused officers at Police Review Commission (PRC) Boards of Inquiry.

Subject officer testimony has been required since July 1, 1983 based on agreements reached in negotiations between the PRC, the Berkeley Police Association (BPA), and the City Manager's Office (CMO) in the fall of 1982.

The requirement is as follows:

Each Subject Officer, each BPD Member Witness, the Duty Command Officer (DCO), the Complainant, and the Police Review Commission's Investigator shall be present at PRC Boards of Inquiry and shall testify unless otherwise directed by the City Manager.

If the DCO observes actions which in his/her opinion constitute a violation of PRC rules and Regulations, the DCO shall request of the Chairperson that the violation be corrected. If the violation is not corrected, the DCO may direct the Subject Officer to leave the hearing. Such a decision should only be reached under very extreme circumstances after all other means of resolving the situation have failed.

The requirement of the Subject Officer to testify shall not apply in cases where the complaint was filed during the 90-day filing extension period.

The requirements to testify before the PRC shall not apply to non-sworn employees of the Parking Division.

THE DAILY CALIFORNIAN Monday, July 14, 2014

NEWS



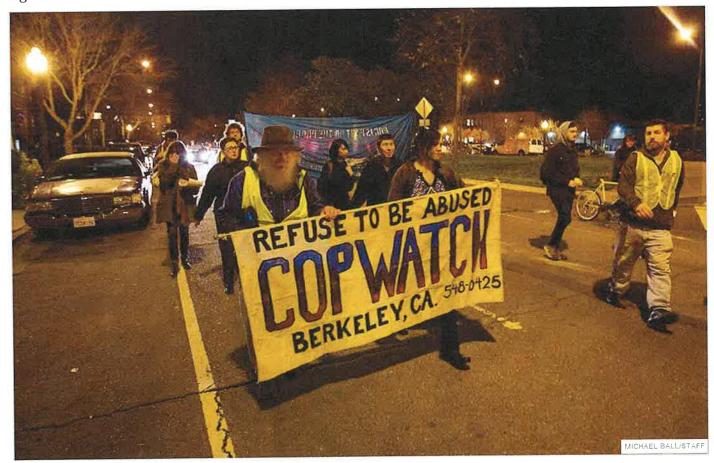
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ASUC CAMPUS CITY CRIME & COURTS RESEARCH & IDEAS UC ELECTION 2012

CITY WEDNESDAY, MAY 7, 2014

Leaked documents shed new light on Kayla Moore's in-custody death

Police Review Commission unanimously finds that one officer did not continually monitor Moore's vital signs



Activists organize in Berkeley a year after Kayla Moore's death in police custody.

BY KIMBERLY VEKLEROV | SENIOR STAFF

LAST UPDATED MAY 8, 2014

Editor's Note:

This project was a collaboration between the Investigative Reporting Program at the UC Berkeley Graduate School of Journalism and The Daily Californian.

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The lawsuit and police reports refer to Moore by masculine pronouns, but the Daily Cal refers to Moore by feminine pronouns, which was her preference.

On Feb. 12, 2013, police responded to a disturbance call in Downtown Berkeley that ended with the sudden in-custody death of Kayla Moore, a 347-pound black transgender woman with a history of mental illness.

Although an internal investigation conducted by Berkeley Police Department determined that none of the officers present that night were at fault, Moore's death prompted intense criticism of the police department. Members of Moore's family and the community — along with LGBT activists and a police watchdog group — have protested City Council meetings, marched through Downtown Berkeley and demonstrated in front of the police station. Accusations flew that Moore's death was caused in part by officers' alleged transphobia and racism. The deceased's father, Arthur Moore, filed a wrongful-death lawsuit in February alleging that police "unlawfully seized, restrained, arrested and battered" his daughter, resulting in her death.

A coroner's report released in May 2013 determined Moore's cause of death was a toxic intersection of methamphetamines and codeine, complicated by cardiovascular disease and obesity. Police maintain that officers committed no wrongdoing.

But three months ago, Berkeley's independent Police Review Commission, which is composed of nine appointed civilians, found that one officer exercised improper police procedure. The commission's confidential findings, which were leaked to The Daily Californian, said, "As the lead officer, Officer (Gwendolyn) Brown had the primary duty to monitor Ms. Moore, but she did not constantly monitor her vital signs."

The only information from the commission's findings previously disclosed to the public omitted the names of officers and the nature of the allegations, which prompted protests at Police Review Commission meetings.

In her testimony during the internal investigation, Brown said Moore never mentioned she was hurt or having trouble breathing.

"My heart goes out to (Moore's) family," Brown testified to investigators. "Someone's child died ... It is very upsetting."

Brown could not be reached after multiple requests for comment.

The commission, which is not a court of law, also heard testimony that at least one officer believed the outstanding warrant for which Moore was arrested may have been meant for a different person. Although the commission did not ultimately come to a majority finding on this point, the leaked testimony showed a discrepancy among officers' accounts of the night.

The commission's findings were sent to the city manager and the chief of police in March. But because they were submitted more than a year after the incident, the chief was not permitted to discipline any officer based on the findings due to an agreement between the police department and the union that represents BPD officers.

The president of the union that represents the city's police officers said the union disagrees with the commission's findings. Though the incident was "tragic," said Sgt. Chris Stines, president of the Berkeley Police Association, "no officer was at fault."

The city has filed paperwork to dismiss the wrongful death lawsuit.

After the Daily Cal reached out to the city and police for comment on the leaked report, the city launched an administrative investigation through its human resources department to determine how the information was leaked. Unionized police officers have since refused to attend PRC meetings, and the union has urged the city to launch an independent criminal investigation into the leak.

The city would not comment on the commission's findings, but city spokesperson



Kayla Moore. Maria Moore/Courtesy

"My heart goes out to (Moore's) family. Someone's child died... It is very upsetting."

- Gwendolyn Brown

Matthai Chakko said in an email, "The information you have been provided includes confidential personnel records protected by Penal Code Section 832.7. You have no authorization to possess the documents or the information."

February 12-13, 2013

Just before midnight on the night of Moore's death, her roommate, John Hayes, called 911 and told the operator that Moore had kicked him out of their apartment. According to police reports, Hayes said Moore was "violent," "aggressive" and needed to be "5150'd," referring to a law that allows police to take a person into custody for a mental health crisis.

According to testimony included in BPD's internal investigation, which was made public last year, officers reported that Hayes said Moore had been "drinking and doing drugs all day." Hayes also told police that Moore was a schizophrenic off her medications.

Once BPD officers Brandon Smith and Kenneth Tu, along with Brown, arrived, Hayes unlocked the door to his fifth-floor apartment on Allston Way, near Shattuck Avenue, for police to enter. Brown called out "Xavier" — Moore's legal first name — and Moore came to the door. Brown attempted to engage Moore in a conversation, but Moore was speaking incoherently, according to the internal investigation.

Brown made a physical motion to Tu that they should take Moore into custody and announced, "Well, Mr. Moore, you have a warrant, and we need to go take care of this," according to the internal investigation.

While Smith was downstairs arresting Hayes on a separate outstanding warrant, according to the internal investigation, Brown and Tu moved in and grabbed Moore's hands in an attempt to handcuff her. Moore drew her hands back, pulling the officers forward. All three fell onto a mattress in the living room. Moore was partially on her stomach, according to the internal investigation.

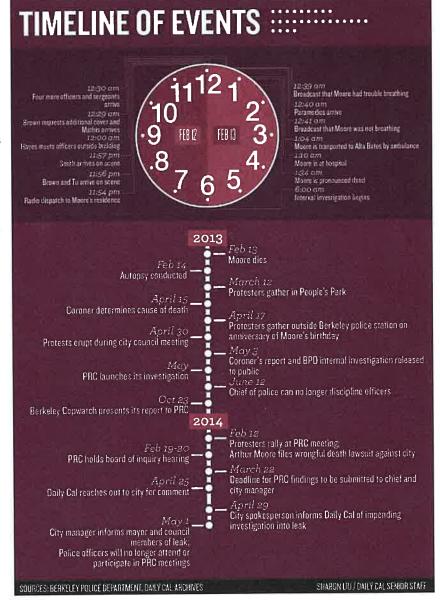
Brown and Tu struggled to handcuff Moore and requested the help of additional officers via radio. Ultimately, eight officers and sergeants arrived at the scene. They used two sets of handcuffs on Moore and a

wrap device to restrain her leg movement, according to the internal investigation. Finally, after five to 10 minutes of struggling on the mattress, Moore stopped resisting.

Soon after, Brown realized Moore's chest had stopped moving. Officers moved Moore from being partially on her stomach to completely on her side. About a minute later, officers observed she was no longer breathing and had no pulse, according to the internal investigation. Tu began chest compressions, while Brown kept Moore's airway open and called for a CPR mask, which provides a protective barrier and makes mouth-to-mouth resuscitation more efficient.

The lawsuit filed by Moore's father alleges that officers could have saved Moore's life with mouth-to-mouth resuscitation. It also alleges that Moore's status as a transgender woman was a factor in the officers' decision not to perform the breathing without a mask.

After a confidential board of inquiry on Feb. 19 and Feb. 20, during which



commissioners questioned officers and reviewed evidence, the board voted unanimously that Brown had violated Training and Information Bulletin 234, which deals with in-custody deaths. The bulletin states, "Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

When investigating allegations claiming police used force improperly, commissioners were required to consider each officer's individual physical contact with Moore rather than their combined force. The commission did not sustain any improper-force allegations.

Warrant confusion

The internal investigation that was released last year showed a discrepancy between two officers' accounts of the night, which testimony heard by the commission also affirmed.

Prior to arriving at the scene, Smith ran a records check for "Xavier Moore" on a computer system in his car. A \$10,000 warrant out of San Francisco came up, according to testimony heard by the commission and the internal investigation. Smith relayed the information to Brown after arriving at the scene.

Later, Smith learned Moore was about 42 years old, according to his testimony in the internal review. Smith realized that the age listed in the warrant was for a person roughly 20 years older than Moore's estimated age.

In two separate testimonies, Smith told both BPD investigators and the commission that he informed Brown of the age discrepancy.

But during her interview with BPD investigators, Brown said she believed the \$10,000 warrant was for Moore and acted according to that mindset. She also maintained that she would have taken Moore into custody regardless of the warrant because of Moore's erratic behavior.

Moore's family has claimed that her arrest was based on a warrant meant for someone else with the same name. In the wrongful death lawsuit, Arthur Moore alleges that "the officers clearly knew that (Moore) was not the person named in the warrant."

During its board of inquiry into the police actions that night, the commission considered whether Brown "lacked sufficient knowledge to effectuate a valid arrest on the warrant," among other allegations, but did not sustain the allegation, with two commissioners voting to sustain and four voting to not sustain.

Supermajority Necessary

The commission investigated each of the six officers who physically interacted with Moore to see if he or she committed the same procedural violation as Brown. Although allegations were not sustained against any other officer, the board voted 4-2 that Tu did not properly monitor Moore's vital signs, according to the leaked findings. Five out of six votes were required to sustain allegations in the Moore case.

In a typical death case for which the commission holds a board of inquiry, all nine commissioners are present, and five out of nine votes are required to sustain an allegation. But in the Moore case, one commissioner was on sick leave, and two commissioners recused themselves because they did not think they could vote impartially.

With only six commissioners present for the board of inquiry, the commission sought the advice of the city attorney to interpret the commission's regulations in deciding what number of votes constituted a majority. In a letter to Katherine Lee, who oversees the commission's investigations, City Attorney Zach Cowan wrote, "The PRC regulations do not specifically state the number of affirmative votes needed to sustain an allegation ... However, based on our review of the relevant PRC regulations, we

"Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

— Training and Information Bulletin 234, which deals with in-custody deaths

advised that five votes were needed to sustain an allegation."

Had the commission used a simple majority — four out of six — the allegation against Tu would have also been sustained.

What Followed

The internal investigation ultimately concluded Moore was in violation of California Penal Code Section 69 resisting an executive officer - which is a more serious version of resisting arrest.

According to the commission's investigation, none of the responding officers had gone through crisisintervention training, a program that teaches police how to deal with people experiencing a mental health crisis. Since the incident, BPD has expanded the number of officers who receive the training. As of February 2013, nine officers had received the training. Today, there are 24 officers who have completed the program, according to BPD officer Jeff Shannon.

Last week, UC Berkeley's student senate unanimously approved a bill in Moore's memory that highlights a need for greater mental health services in the city.

Commission Challenges

The commission's findings ultimately bore no weight in the police department.

Regardless of which allegations were ultimately sustained, BPD Chief Michael Meehan was not permitted to discipline any officers based on the commission's findings, because they were submitted more than 120 days after the incident occurred. Meehan declined to comment due to the ongoing lawsuit.

The commission could not begin its investigation until BPD's own internal review was complete, which happened in May 2013. PRC officer Katherine Lee said collecting testimony and evidence in the Moore case was particularly lengthy.

"Even in a simple case, it takes a lot of work to meet 120 days," Lee said. "In this case, it was almost impossible."

Kimberly Veklerov is the executive news editor. Contact her at kveklerov@dailycal.org and follow her on Twitter @KVeklerov.

POLICE REVIEW COMMISSION FINDINGS Finding Vote Allegation Officer Not Sustained Gardner Improper Use of Force (Improper Physical Contact) Improper Use of Force (Improper Use of Any Object the Wrap) Mathis Improper Use of Force (Improper Use of Any Object the Wrap) Untounded Brown Sustained 6-0 Improper Police Procedure Not Sustained Unfounded Smith Not Sustained Unfounded o majority Fading Not Sustained Sustained Definitions ice, but less than beyond a reasonable dos ASHLEY HIRASUNA/DAILY CAL STAFF



Maria Moore/Courtesy

Please keep our community civil. Comments should remain on topic and be respectful. Read our full comment policy

6 Comments

The Daily Californian



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1	Harry S. Stern, SBN 176854							
2	Timothy K. Talbot, SBN 173456 Steven M. Betz, SBN 271543							
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4	San Francisco, CA 94104 Telephone: 925.609.1699							
5	Facsimile: 925.609.1690							
6	Email: hstern@rlslawyers.com							
7	Attorneys for Gwendolyn Brown and Berkeley Police Association							
8	3							
9	SUPERIOR COURT	OF THE STATE OF CALIFORNIA						
10	COUN	NTY OF ALAMEDA						
11		×						
12	GWENDOLYN BROWN, BERKELEY POLICE ASSOCIATION,	Case No.						
13		DECLARATION OF CHRIS STINES						
14	Plaintiffs,							
15	CITY OF BERKELEY, BERKELEY							
16	POLICE REVIEW COMMISSION, AND DOES 1-50,							
17	la la							
18	Defendants.							
19	E I							
20	I, Chris Stines, declare as follows:							
21	1. I am a Sergeant of Police employed by the Berkeley Police Department.							
22	2. I currently serve as the President of the Berkeley Police Association (hereinafter "the							
23	BPA").							
24	3. I make this declaration based upon my personal knowledge, and if called to testify as a							
25	witness could and would testify competently to the matters contained herein.							
26	4. The commissioners who served during the Board of Inquiry regarding Ms. Moore's							
27	death were: Michael Sherman, Kiran Shinoy, Barbara Allen, Alison Bernstein, Karen Lohurst, and							
28	Oliver Zerrudo.	Til.						
J								

BROWN AND BPA V. CITY OF BERKELEY, ET AL.; DECLARATION OF CHRIS STINES

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- After learning about the leak of confidential information to the Daily Californian, the 5. BPA demanded that the City of Berkeley (hereinafter "the City") conduct an investigation to determine the source of the leak.
- The City refused to investigate the commissioners of the Police Review Commission 6. (hereinafter "the PRC"), because the City claimed the commissioners were not City employees.
- The PRC intends to resume hearings on August 6, 2014. The PRC has ordered two BPA 7. members to appear before the PRC on that date.
- Attached hereto as Exhibit A is a true and correct copy of City of Berkeley Ordinance 8. No. 4644-N.S.
- Attached hereto as Exhibit B is a true and correct copy of an article published in the 9. Daily Californian on May 7, 2014 titled Leaked Documents Shed New Light on Kayla Moore's In-Custody Death.
- Attached hereto as Exhibit C is a true and correct copy of the Rules and Regulations of 10. the Berkeley Police Review Commission.
- Attached hereto as Exhibit D is a true and correct copy of a memorandum from then-11. City Manager Michael Brown dated July 20, 1990.
- Attached hereto as Exhibit F is a true and correct copy of a letter from current City 12. Manager Christine Daniel dated July 10, 2014.
- 13. Attached hereto as Exhibit G is a true and correct copy of the Resolution of the Police Review Commission.
- Attached hereto as Exhibit H is a true and correct copy of the signed declaration by the 14. Police Review Commissioners.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 4, 2014

CHRIS STINES

ORDINANCE NO. 4644-N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

<u>Section 1</u>. The general purpose of this Ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

<u>Section 2</u>. There is hereby established a Police Review Commission for the City of Berkeley. Said Commission shall consist of nine (9) members. Each Council member shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd numbered year and ending on October 3 of each succeeding odd numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Councilmember whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a temporary vacancy shall thereupon exist for the period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

<u>Section 5</u>. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

<u>Section 6.</u> The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour,

but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of City Clerk.

Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the City Clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.

<u>Section 7</u>. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accommodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three (3) months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to each member and received at least thirty-six (36) hours prior to such meeting, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three (3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary of the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of

the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

Section 9. In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers, and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meeting of any other Police Department personnel or City officials it deems appropriate in the carrying out of its responsibilities under this Ordinance.

<u>Section 10</u>. The Commission established by this Ordinance shall have the following powers and duties:

- a) to advise and make recommendations to the public, the City Council, and the City Manager;
- b) to review and make recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally, such review and recommendation to extend to, but not be limited to, the following:
 - i) treatment of rape victims;
 - ii) police relationship with minority communities;
 - iii) use of weapons and equipment;
 - iv) hiring and training;
 - v) priorities for policing and patrolling;
 - vi) budget development;
- viii) other concerns as specified from time to time by the City Council;
- c) to request and receive promptly such written and unwritten information, documents, and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this Ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each of all of which are hereby directed out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice pending litigation concerning them shall not be required to be made available to the Commission except in general form to the extent police activities in specific cases reflect Police Department policies and; provided that the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;
- d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice without limitation including disciplinary and action relating to departmental

policies and procedures to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation and that the Police Department shall conduct its own investigation only at the request of said Commission, and;
- that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager;
- e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;
- f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes.
- Section 11. That Ordinance No. 4061-N.S. and Ordinance No. 4149-N.S. and No. 4887-N.S. in amendment thereof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, and publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Officer of the City Manager for the use and benefit of the newly created Police Review Commission.
- <u>Section 12</u>. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

In effect: April 17, 1973

___*Section 3 amended December 3, 1982; see attachment.

___*Language shown in strike out type was declared invalid by the California Court of Appeal on April 12, 1976.

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Ordinance 4644 - City of Berkeley, CA

Case 3:14-cv-03950-EDL Document 1-5 Filed 09/02/14 Page 8 of 72

http://www.ci.berkeley.ca.us/ContentPrint.aspx?id=6920

_ **The language shown in strike out type was declared invalid by the California Court of Appeals on April 12, 1976.





THE DAILY CALIFORNIAN Saturday, July 12, 2014

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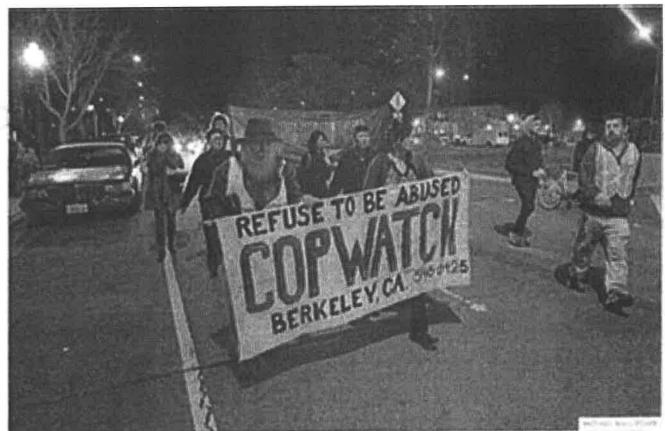
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CITY

WEDNESDAY, MAY 7, 2014

Leaked documents shed new light on Kayla Moore's in-custody death

Police Review Commission unanimously finds that one officer did not continually monitor Moore's vital signs



Activists organize in Berkeley a year after Kayla Moore's death in police custody.

BY KIMBERLY VEKLEROV | SENIOR STAFF

LAST UPDATED MAY 8, 2014

Editor's Note:

This project was a collaboration between the Investigative Reporting Program at the UC Berkeley Graduate School of Journalism and The Daily Californian.

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Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page11 of 72

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Kayla Moore, Maria Moore/Courtesy

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February 12-13, 2013

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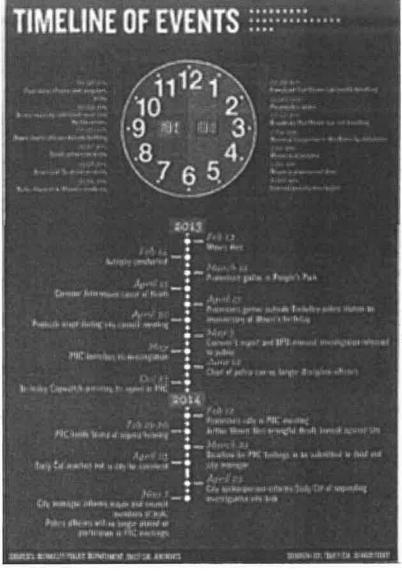
Brown and Tu struggled to handcuff Moore and requested the help of additional officers via radio. Ultimately, eight officers and sergeants arrived at the scene. They used two sets of handcuffs on Moore and a

wrap device to restrain her leg movement, according to the internal investigation. Finally, after five to 10 minutes of struggling on the mattress, Moore stopped resisting.

Soon after, Brown realized Moore's chest had stopped moving. Officers moved Moore from being partially on her stomach to completely on her side. About a minute later, officers observed she was no longer breathing and had no pulse, according to the internal investigation. Tu began chest compressions, while Brown kept Moore's alrway open and called for a CPR mask, which provides a protective barrier and makes mouth-to-mouth resuscitation more efficient.

The lawsuit filed by Moore's father alleges that officers could have saved Moore's life with mouth-to-mouth resuscitation. It also alleges that Moore's status as a transgender woman was a factor in the officers' decision not to perform the breathing without a

After a confidential board of inquiry on Feb. 19 and Feb. 20, during which



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commissioners questioned officers and reviewed evidence, the board voted unanimously that Brown had violated Training and Information Bulletin 234, which deals with in-custody deaths. The bulletin states, "Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

When investigating allegations claiming police used force improperly, commissioners were required to consider each officer's individual physical contact with Moore rather than their combined force. The commission did not sustain any improper-force allegations.

Warrant confusion

The internal investigation that was released last year showed a discrepancy between two officers' accounts of the night, which testimony heard by the commission also affirmed.

Prior to arriving at the scene, Smith ran a records check for "Xavier Moore" on a computer system in his car. A \$10,000 warrant out of San Francisco came up, according to testimony heard by the commission and the internal investigation. Smith relayed the information to Brown after arriving at the scene.

Later, Smith learned Moore was about 42 years old, according to his testimony in the internal review. Smith realized that the age listed in the warrant was for a person roughly 20 years older than Moore's estimated age.

In two separate testimonies, Smith told both BPD investigators and the commission that he informed Brown of the age discrepancy.

But during her interview with BPD investigators, Brown said she believed the \$10,000 warrant was for Moore and acted according to that mindset. She also maintained that she would have taken Moore into custody regardless of the warrant because of Moore's erratic behavior.

Moore's family has claimed that her arrest was based on a warrant meant for someone else with the same name. In the wrongful death lawsuit, Arthur Moore alleges that "the officers clearly knew that (Moore) was not the person named in the warrant."

During its board of inquiry into the police actions that night, the commission considered whether Brown "lacked sufficient knowledge to effectuate a valid arrest on the warrant," among other allegations, but did not sustain the allegation, with two commissioners voting to sustain and four voting to not sustain.

Supermajority Necessary

The commission investigated each of the six officers who physically interacted with Moore to see if he or she committed the same procedural violation as Brown. Although allegations were not sustained against any other officer, the board voted 4-2 that Tu did not properly monitor Moore's vital signs, according to the leaked findings. Five out of six votes were required to sustain allegations in the Moore case.

In a typical death case for which the commission holds a board of inquiry, all nine commissioners are present, and five out of nine votes are required to sustain an allegation. But in the Moore case, one commissioner was on sick leave, and two commissioners recused themselves because they did not think they could vote impartially.

With only six commissioners present for the board of inquiry, the commission sought the advice of the city attorney to interpret the commission's regulations in deciding what number of votes constituted a majority. In a letter to Katherine Lee, who oversees the commission's investigations, City Attorney Zach Cowan wrote, "The PRC regulations do not specifically state the number of affirmative votes needed to sustain an allegation ... However, based on our review of the relevant PRC regulations, we

"Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

— Training and Information Bulletin 234, which deals with in-custody deaths

advised that five votes were needed to sustain an allegation."

Had the commission used a simple majority — four out of six - the allegation against Tu would have also been sustained.

What Followed

The internal investigation ultimately concluded Moore was in violation of California Penal Code Section 69 resisting an executive officer - which is a more serious version of resisting arrest.

According to the commission's investigation, none of the responding officers had gone through crisisintervention training, a program that teaches police how to deal with people experiencing a mental health. crisis. Since the incident, BPD has expanded the number of officers who receive the training. As of February 2013, nine officers had received the training. Today, there are 24 officers who have completed the program, according to BPD officer Jeff Shannon.

Last week, UC Berkeley's student senate unanimously approved a bill in Moore's memory that highlights a need for greater mental health services in the city.

Commission Challenges

The commission's findings ultimately bore no weight in the police department.

Regardless of which allegations were ultimately sustained, BPD Chief Michael Meehan was not permitted to discipline any officers based on the commission's findings, because they were submitted more than 120 days after the incident occurred. Meelian declined to comment due to the ongoing lawsuit.

The commission could not begin its investigation until BPD's own internal review was complete, which happened in May 2013. PRC officer Katherine Lee said collecting testimony and evidence in the Moore case was particularly lengthy.

"Even in a simple case, it takes a lot of work to meet 120 days," Lee said. "In this case, it was almost impossible."

Kimberly Veklerov is the executive news editor. Contact her at kveklerov@dailycal.org and follow her on Twitter @KVeklerov.





Maria Moore/Courtesy

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Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page15 of 72



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Post the leaked documents in their entirety. The government wasn't transparent. The press should be.

G A Repty . Share:



Mel Content + 2 groups agri

Last week, UC Berkeley's student senate unanimously approved a bill in Moore's memory that highlights a need for greater mental health services in the city.

All the "mental health services" in the world won't do any good if an unsupervised mental case won't take the medication he/she is supposed to be taking, and takes recreational drugs instead. Maybe it's time for the state of California to reconsider the policies allowing mentally ill people to run amuck and start locking up those who are a danger to themselves or others...

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Excellent work by the Investigative Reporting Program at the UC Berkeley Graduate School of Journalism and The Daily Californian. We always knew Kayla was killed by the Berkeley Police Department. Now for criminal prosecution of Berkeley Police Officer Gwendolyn Brown for murder and the other Berkeley police officers for conspiracy to commit murder. In addition, a criminal investigation should be opened up by the FBI and the U.S. Department of Justice for the murder and conspiracy to commit murder as well as a violation of her civil rights under the United States Code. We always knew the Coroner's office conspired with the police to cover up civilian deaths. This case only proves that fact. The Coroner's office should be included in the investigation and prosecution on both the state and federal level.

3 A See Roomy · Shares



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Excellent work by the Investigative Reporting Program at the UC Berkeley Graduate School of Journalism and The Daily Californian. We always knew Kayla was killed by the Berkeley Police Department.

Funny how the actual report contradicts your silly and inflammatory statements...

10 A w · Bepty · Sherw ·



dad510 + 2 months ago

RIP Kayla Moore, and shame on BPD for not only contributing to her death but covering up said contribution.

1 A | w - Rophy - Share /



Mel Content → dedS10 + 2 moretis ago

Uh, did you actually read the results of the Police Review Commission, which were listed in the table (graphic) to the right of the article?

4 a. . . Ropty · Strong ·

also on the daily califoreian

YERATS THE

UC Berkeley to join other UC campuses with crowdfunding platform

Limennese: 3 days ago

Shows Structer — Insightful and informative article. Crowdfunding is a great way to raise awareness of all of the innovative projects on campus. Thanks for highlighting this opportunity!

Funds to UCLA student political party came from outside donors, leaked emails show

19 romments • 9 days ago

	way - "Unfortunately, this recent attack is representative of a new
3	breed of bullying on our campuses in which baseless attacks are
	leveled against the integrity of individuals." A-this is not an attack,

Berkeley city official announces candidacy for AC Transit director at large

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Berkeley officials push for legislation deterring cell phone that

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Company	ocheck? — A more accurate, less sensationalized title would read
	"Berkeley City Council Publicity Hounds Attended Press
	Conference Organized by Others, Supporting Legislation Propose

Arthur Moore, Berkeley Police, Berkeley Police Review Commission, Brandon Smith, city government, Crime & Courts, Gwendolyn Brown, Jeff Shannon, John Hayes, Katherine Lee, Kayla Moore, Kenneth Tu, lawsult, LGBT, Maria Moore, Matthel Chakko, Michael Mechan, Transgender, Zach Cowan

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MOST RECENT NEWS

BOI (Board of Inquiry) Findings on PRC Complaint #2327 February 20, 2014

Chair: Now 10:30 p.m. I'm announcing the findings of the Board of Inquiry in complaint #2327. For this complaint five votes are needed to make a finding.

Allegation #1, Officer A, Exonerated (6 votes to 0)

Allegation #2, Officer A, Not Sustained (6 [votes] to 0)

Allegation #2, Officer B, Not Sustained (6 [votes] to 0)

Allegation #2, Officer C, Not Sustained (6 [votes] to 0)

Allegation #2, Officer D, Not Sustained (6 [votes] to 0)

Allegation #2, Officer E, Not Sustained (6 [votes] to 0)

Allegation #2, Officer F, Not Sustained (6 [votes] to 0)

Allegation #3, Officer E, Unfounded (6 [votes] to 0)

Allegation #3, Officer D, Unfounded (the vote was 6 to nothing)

Allegation #4, Officer A, Sustained (6 [votes] to 0)

Allegation #4, Officer B, the Board of Inquiry did not agree on a majority finding; there were 2 votes Not to Sustain, and 4 votes to Sustain.

Allegation #4, Officer C, Unfounded (6 [votes] to 0)

Allegation #4, Officer D, Not Sustained: Unfounded 1 vote, Not Sustained 5 votes

Allegation #4, Officer E, Unfounded (6 votes to 0)

Allegation #4, Officer F, Not Sustained (6 votes Not Sustained)

Allegation #5, Officer A, the votes were 4 to Not Sustain and 2 to Sustain, and the Board did not agree on the majority finding.

CITY OF BERKELEY

REGULATIONS

For Handling Complaints Against Members of the Police Department

POLICE REVIEW COMMISSION

POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704 510.981-4950 TDD: 510.981.6903 FAX: 510. 981-4955 e-mail: <u>prc@ci.berkeley.ca.us</u> http://www.ci.berkeley.ca.us/prc/

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BERKELEY POLICE REVIEW COMMISSION

REGULATIONS FOR HANDLING COMPLAINTS AGAINST MEMBERS OF THE POLICE DEPARTMENT

(Adopted May 13, 1975) (Amended August 8, 1984) (Amended April 30, 1990) (Amended May 26, 1993) (Amended November 7, 2007) (Amended July 14, 2010)

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations. Consistent with the powers granted to it by the enabling Ordinance, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley.

These regulations incorporate the confidentiality provisions required by the Decision in Berkeley Police Association v City of Berkeley (2008) 167 Cal.App.4th 385.

I. GENERAL

- A. Application of Regulations-Confidentiality of Complaint Proceedings. The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.
- B. <u>Definitions</u>. The following definitions shall apply in these regulations:
 - 1. <u>Administrative Closure:</u> Complaint closure before a BOI hearing. Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint.
 - 2. Allegation: A specific assertion of police misconduct by a complainant or the Commission.

- 3. <u>Board of Inquiry (BOI)</u>: Three Commissioners impaneled to hear and render findings on complaints; a BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.
- 4. <u>BOI Hearing Packet:</u> Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.
- 5. <u>Commissioner</u>: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.
- 6. <u>Complaint</u>: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee (including employees of the Public Safety Communications Center) while engaged in official duties.
- 7. <u>Complainant</u>: Any person who files a complaint with the PRC; is considered a witness to the complaint during a BOI hearing.
- 8. <u>Duty Command Officer</u> (DCO): A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.
- 9. *Findings Report:* Summary of the BOI's findings, provided to the City Manager and the Chief of Police within 30 calendar days of the hearing.
- 10. Investigation: A formal process of resolving complaints.
- 11. <u>Mediation</u>: A process of resolving complaints informally, without investigation, in conjunction with a local mediation agency, if both the complainant and the subject officer agree. Mediation may be considered in all cases except those involving the death of an individual.
- 12. <u>Policy complaint:</u> A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.
- 13. <u>PRC Investigator</u>: A person employed by the City Manager and assigned to the PRC to investigate complaints.
- 14. <u>PRC Officer:</u> A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.
- 15. Report of Investigation: Report issued within 75 calendar days of the filing date of the complaint.
- 16. Subject Officer: A sworn BPD officer, or other BPD employee, against whom a complaint is filed.
- 17. <u>Summary Dismissal</u>: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.
- 18. <u>Supplemental Report of Investigation:</u> Report issued no later than 10 business days before a BOI hearing, as part of the BOI Hearing Packet.

- 19. *Toll:* Stop the running of the clock/investigation timeline.
- 20. <u>Witness Officer</u>: A sworn BPD officer, or other BPD employee, who has personal knowledge of events described in a complaint, but is not the subject officer.

II. INITIATING THE PROCESS

A. Filing a Complaint

1. Complaint Form

Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant.

Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

2. Filing Period

- a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to file in a timely fashion. The PRC Officer or Investigator will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.
- b. For late-filed complaints, the subject officer(s) are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or the Chief of Police.

3. Unavailability of Complainant

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

4. Sufficiency of Complaint

- a. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC Officer or Investigator to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. IV(A)(2)), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation.
- b. Policy complaints will be brought to the Commission, within 30 calendar days of filing, at a regularly scheduled meeting for discussion or action. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.

5. Right to Representation

Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but an attorney is not required. If PRC staff is notified that a complainant or subject officer is represented by an attorney, PRC staff shall thereafter send copies of any materials and notification provided to the complainant or the subject officer(s) to their representative.

B. Mediation

1. Election

- a. The PRC Officer or Investigator shall, prior to, or concurrent with, the filing of a complaint, provide the complainant with information about the difference between mediation and an investigation. PRC staff shall make all reasonable efforts, and document their efforts, to contact the complainant within 2 business days of the filing of the complaint to discuss the complainant's preference, provided the complaint is appropriate for mediation.
- b. If the complainant elects mediation, the PRC staff shall provide the subject officer with a copy of the complaint and notify him or her of the complainant's election, within 10 calendar days.
- c. If the subject officer agrees to mediation, s/he shall notify the PRC Officer or the Investigator within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the mediation break down and the mediator determine that the officer is acting in bad faith.¹

2. Conclusion

¹ Bad Faith: An intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others. (West's Encyclopedia of American Law, edition 2, Copyright 2008).

- a. Mediation may continue as long as the mediator feels that progress is being made; it may be terminated if the mediator determines that either party is acting in bad faith. If the mediator terminates the mediation because the subject officer is acting in bad faith, the complainant will be advised of his/her right to proceed with the PRC investigation and hearing. If the mediator terminates the mediation because the complainant is acting in bad faith, the PRC Officer or Investigator shall submit the complaint to the Commission for administrative closure.
- b. If mediation is successfully concluded, the mediator will provide written notice to the PRC and the BPD within 5 calendar days of the last mediation session. The PRC will consider the matter resolved and the complaint will be submitted for administrative closure.

3. Records retention

Mediation records will be destroyed 1 year from the date of election by the complainant.

III. COMPLAINT INVESTIGATION

Notice and Availability of Complaint

1. Notice of Allegations

Within 20 business days of the date a timely-filed complaint is received at the PRC office, unless it is submitted to the Commission for administrative closure or the complainant elects mediation, the Investigator shall prepare a Notice of Allegations. The Notice of Allegations shall be sent in hard copy and, when feasible, electronically, to the complainant, the Chief of Police and/or BPD Internal Affairs, and, by delivery to the BPD, each identified subject officer. If the Notice of Allegations is not issued in the time required, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

2. Availability of Complaint

The complaint shall be available at the PRC office, and a copy shall be provided to the subject officer with the Notice of Allegations. PRC staff shall maintain a central register of all complaints filed.

B. Investigation Process

1. Nature of Investigation

The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint; collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations, Report of Investigation, and a Board of Inquiry Hearing (Hearing) Packet.

2. Time for Investigation

a. The investigation must be completed within one year, unless a Government Code Sec. 3304(d) exception applies.

² Recordings of interviews shall be kept for 100 days or until the Board of Inquiry's Findings Report has been provided to the City Manager, whichever is later.

- b. If the investigation is not completed within one year, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the case shall be closed, unless the Commission determines that a Government Code Sec. 3304(d) exception applies.
- c. If a Government Code Sec. 3304(d) exception to the one-year limitation period applies, the BOI Hearing Packet shall state the applicable exception.

3. Pending Criminal Action

If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not undertake an investigation until the criminal matter has been adjudicated or dismissed. All time limitations applicable to the processing of PRC complaints shall be tolled during the pendency of any such criminal proceedings. Within one week of the filing of the complaint, or as soon thereafter as possible, the PRC Officer shall determine the status and anticipated resolution of the criminal proceedings by communicating, in writing, directly with the District Attorney's Office.

C. Interviews

1. Conduct

Interviews should be conducted in a manner that will produce a minimum of inconvenience and embarrassment to all parties. BPD officer interviews must be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3303. When possible, BPD employees should not be contacted at home, and others should not be contacted at their places of employment.

2. Notice

PRC staff shall notify subject and witness officers at least 2 weeks before the scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. Follow-up notices will be sent at least one week before the scheduled date. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.

3. Exercise of Constitutional Rights

Subject officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit B). While all BPD employees have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the PRC regarding conduct and observations that arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not be considered by the Commission in its disposition of a complaint.

D. Reports

1. BPD Reports

a. The PRC should receive un-redacted police reports from BPD once the PRC Officer has established and implemented security and chain of custody procedures that satisfy the City Manager and the Chief of Police. Police reports will be redacted when distributed to BOI Commissioners, but un-redacted reports will be available at the PRC Office for BOI Commissioners to review.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - (1) The original Communications Center tapes relevant to the complaint.
 - (2) All police reports, records, and documentation.
 - (3) Names, addresses, telephone numbers, and statements of all witnesses.

2. Report of Investigation

- a. The PRC Officer or the Investigator shall assemble all relevant information in a confidential Report of Investigation. The Report shall list the allegations, provide a summary of the complaint, provide the applicable BPD, state or local rules and regulations, and include a copy of the interview transcripts.
- b. The Report shall be provided to the subject officers, with a copy to the Chief of Police, within 75 calendar days of the date of filing of the complaint. If the Report is not timely, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

IV. PRE-HEARING COMPLAINT DISPOSITION

A. Administrative Closure

1. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- a) Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- b) Request for closure by complainant.
- c) Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- d) Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means (e.g. mediation).
- e) Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a Board of Inquiry hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- f) Failure to timely issue the Notice of Allegations, as set forth in Section III(A)(1).
- g) Failure to timely issue the Report of Investigation, as set forth in Section III(D)(2)(b).

- h) Failure to timely complete its investigation, as set forth in Section III(B)(2).
- i) A policy complaint that has been considered by the Commission.

2. Procedure

A complaint may be administratively closed by a majority vote of Commissioners during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than 5 calendar days prior to said meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

A policy complaint may be administratively closed by a majority vote of Commissioners during open session at a regularly scheduled meeting.

3. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

B. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before a hearing. Upon receipt of a "no contest" response, the PRC Officer or Investigator shall refer the file and the response to the City Manager and the Chief of Police for appropriate action.

C. Waiver of Hearing

Either the complainant or the subject officer may request that findings be rendered without a hearing. If both the complainant and the subject officer sign a written waiver of their right to a hearing, a Board of Inquiry may issue findings based on interview statements and documentary evidence.

V. BOARDS OF INQUIRY

Composition.

A Board of Inquiry (BOI) shall consist of 3 Commissioners, who shall designate one of them to be Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of 6 Commissioners, the Commission shall sit as a Board of the whole, with a minimum of 6 Commissioners.

B. <u>Designation</u>

1. Obligation to Serve

Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the factual dispute to be heard. PRC staff will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period. A BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

2. Unavailability of BOI Member

If any member of a Board of Inquiry becomes unavailable, s/he shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within 7 calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Section 4(C) below. The notice of challenge of a substituted Commissioner must be made at least 3 business days prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the hearing.

3. Effect of Continuance

If a hearing is rescheduled due to the unanticipated unavailability of the complainant(s), the subject officer(s) or the complainant's or subject officer's attorney, the case may be reassigned to another Board of Inquiry. The Board composition shall not change once a hearing has been convened, however.

C. Challenge of BOI Commissioner

1. Basis for Challenge

A Commissioner who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

- a) a familial relationship or close friendship with the complainant or subject officer;
- b) witnessing events material to the inquiry;
- c) a financial interest in the outcome of the inquiry;
- d) a bias for or against the complainant or subject officer.

2. Procedure

- a. Within 7 calendar days from the date of mailing of the Board of Inquiry hearing packet, which includes the names of the Commissioners constituting that Board, the complainant or the subject officer(s) may file a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest.
- b. The PRC Officer or his/her designee shall contact the challenged Commissioner as soon as possible after receipt of the challenge.
- c. If the Commissioner agrees, PRC Officer or his/her designee shall ask another Commissioner to serve.
- d. If the Commissioner does not agree that the challenge is for good cause, PRC Officer or his/her design shall poll the other members of the Board and, if both agree that the challenge is for good cause, shall inform the challenged Commissioner and ask another to serve.

e. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be part of the record of the complaint.

3. Replacement of Commissioners

Any Commissioner who is unable to serve for any reason shall be replaced by another Commissioner, except in cases involving a death.

D. Responsibilities of BOI Commissioners

1. Confidentiality

- a. Each Commissioner shall maintain strict confidentiality.
- b. Each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff after the hearing has been concluded.

2. Conduct

- a. Commissioners shall not publicly comment on any complaints.
- b. Commissioners shall not discuss any of the facts or analysis of a pending complaint.
- Commissioners shall not pledge or promise to vote in any particular manner in a pending complaint.

3. Breach

Failure to comply with these provisions shall be grounds for removing a Commissioner from a BOI. In addition, a Commissioner or the PRC Officer may bring a violation to the attention of the full Commission, for discussion or action, at a regularly scheduled meeting. Possible action, which requires a two-thirds vote, may include notification of the breach to the appointing City Councilmember.

E. Function

- 1. The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.
- 2. The BOI members shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding dismissed citations.

F. Subpoena Power

The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

VI. HEARINGS

A. Scheduling and Notice

1. BPD Schedules

The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation, or authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.

2. Notice

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide written notice of the date, time and location of the hearing, and the composition of the Board of Inquiry, to the complainant, the subject officer(s), any representatives, civilian witnesses, witness officers, the BOI members and the Chief of Police.

B. Board of Inquiry Hearing Packet

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide a Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

- 1. The BOI members shall receive a Hearing Packet that contains:
 - a) The PRC Officer's or the PRC Investigator's recommendations, if any, concerning summary disposition or procedural matters.
 - b) A copy of the complaint,
 - c) The Supplemental Report of Investigation, which includes a summary of the complaint, a summary of the interview statements, the applicable BPD, state or local rules and regulations, and a brief analysis.
 - d) Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
 - e) A copy of all the interview transcripts.
- 2. The subject officer(s), the officer's representative, the DCO, and the Chief of Police shall receive a Hearing Packet that contains the documents listed in Section V(B) (1)(a, c, d) above; a copy of the complaint (Section V(B) (1)(b)) and the interview transcripts (Section V(B) (1)(e)) shall be provided only if they have not been provided previously.
- 3. The complainant shall receive a Hearing Packet that contains:
 - a) A copy of the complaint.

- b) Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
- c) A copy of the complainant's interview transcript.
- 4. Each witness shall receive a copy of his/her interview transcript.

C. Pre-Hearing Motions

1. Newly Discovered Evidence and/or Witnesses.

The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the PRC Officer or Investigator no later than 10 business days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. The PRC Officer or Investigator shall inform the BOI of the newly discovered evidence or witnesses as soon as possible.

The BOI shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and the PRC Officer or Investigator shall notify both the complainant and the subject officer of the Board's decision.

2. Procedural Issues.

The complainant and subject officer shall raise any procedural issues, by submitting them to the PRC Officer in writing, no later than 5 business days before the scheduled hearing date. Procedural issues can include, but are not limited to, the expiration of the 1-year limitation period and/or whether an officer should testify.

3. Summary Disposition

a. Summary Dismissal After reviewing the Hearing Packet, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit, by unanimous vote, on the recommendation of the PRC Officer or Investigator, its own motion, or that of the subject officer. Parties to the complaint shall be notified of the summary dismissal, and may appear to argue for or against summary disposition.

b. Summary Affirmation

After reviewing the Hearing Packet, the BOI may summarily sustain any or all of the allegations that it finds clearly meritorious, by unanimous vote, on the recommendation of the PRC Officer or Investigator, or its own motion. The subject officer shall be notified of the summary affirmation, and may appear to object to the summary affirmation, which shall not occur over the subject officer's objection.

4. Continuances

- a. A continuance may be granted by a majority of the BOI. In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
- b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises.
- c. A continuance shall not be granted in the absence of good cause.
- d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the moving party can demonstrate a grave emergency that will unduly prejudice him or her if the hearing is not continued.
- e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

D. Procedure

- 1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.
- 2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.
- 3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.
- 4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.
- 5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.
- 6. The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.
- 7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements, and will then answer questions from the subject officer(s) or the subject officer's representative(s) and the Commissioners. After questioning is completed, the complainant will have

up to 15 minutes to provide a summary of his/her case and/or closing statement. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.

- 8. The subject officers and any witness officers will be called into the hearing room to testify separately. Each officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.
- 9. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. "Hearsay evidence" is evidence of a statement that was made by someone other than the witness testifying at the hearing.

Evidence shall be taken in accordance with the following provisions:

- a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.
- b) Oral evidence shall be taken only under oath.
- c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.
- d) The Chairperson shall exclude unruly or disruptive persons from the hearing.
- e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.
- f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
- g) If the BOI needs additional evidence to reach its findings, it will continue the hearing to a future date, unless the parties agree to allow the Board to receive such material in writing without reconvening.

h) If, upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.

VII. DELIBERATION AND FINDINGS

A. Deliberation

After the hearing has been concluded, the Board will deliberate outside of the presence of the complainant, the subject officer(s), and any witnesses or representatives. The Board shall not consider any information not received in the Hearing Packet or during the hearing.

B. Majority Vote

All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

C. Standard of Proof

No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

D. Categories of Findings

- 1. If the evidence shows that the alleged act did not occur, the finding shall be "Unfounded".
- 2. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained".
- 3. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated".
- 4. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be "Sustained".

E. Findings Report and Notification

- 1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.
- 2. Within 30 calendar days of the hearing, the PRC office shall submit a Finding Report, together with the Hearing Packet, to the City Manager and the Chief of Police.

F. Petition for Rehearing.

- 1. Within 15 calendar days of the mailing of the Board's findings, any party to the complaint may petition in writing for a rehearing. A rehearing may be granted only if the applicant establishes that: there is newly discovered, material evidence that, with reasonable diligence, could not have been discovered and produced at the hearing; or, that there was substantial procedural error likely to have affected the outcome.
- 2. Within 21 calendar days of the receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 35 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.

VIII. AMENDMENT AND AVAILABILITY OF REGULATIONS

- Amendments to the Regulations for Handling Complaints Against Members of the Police Department (Regulations) require a majority vote of the Commission.
- Amendments shall be distributed to Commissioners, the Berkeley Police Association, the City Manager, the City Attorney, and the Chief of Police.
- The PRC office shall maintain a complete set of the current Regulations.

Exhibit B

SUBJECT OFFICER TESTIMONY

MEMORANDUM

July 20, 1990

To:

Ronald D. Nelson, Chief of Police

Police Review Commission Berkeley Police Association

From:

Michael F. Brown, City Manager

Subject:

SUBJECT OFFICER TESTIMONY

The purpose of this memorandum is to set forth my policy regarding testimony by accused officers at Police Review Commission (PRC) Boards of Inquiry.

Subject officer testimony has been required since July 1, 1983 based on agreements reached in negotiations between the PRC, the Berkeley Police Association (BPA), and the City Manager's Office (CMO) in the fall of 1982.

The requirement is as follows:

Each Subject Officer, each BPD Member Witness, the Duty Command Officer (DCO), the Complainant, and the Police Review Commission's Investigator shall be present at PRC Boards of Inquiry and shall testify unless otherwise directed by the City Manager.

If the DCO observes actions which in his/her opinion constitute a violation of PRC rules and Regulations, the DCO shall request of the Chairperson that the violation be corrected. If the violation is not corrected, the DCO may direct the Subject Officer to leave the hearing. Such a decision should only be reached under very extreme circumstances after all other means of resolving the situation have failed.

The requirement of the Subject Officer to testify shall not apply in cases where the complaint was filed during the 90-day filing extension period.

The requirements to testify before the PRC shall not apply to non-sworn employees of the Parking Division.



Office of the City Manager

July 10, 2014

To:

Mayor and City Councilmembers

From:

Christine Daniel, City Manager

Subject:

Police Review Commission: Regulation Changes

and Actions Concerning Confidentiality

I am writing to inform you of recent actions taken by the Police Review Commission (PRC) to address concerns about handling of confidential police personnel records. You will recall that in late April 2014, the Daily Californian indicated it would publish an article which would include confidential police personnel information that had been "leaked" to it. The Daily Californian subsequently published that article and declined to disclose the identity of the individual or individuals who had provided the information.

I directed that a personnel investigation be undertaken to determine whether any City employees had disclosed the information. On May 9, 2014, I informed the PRC that the investigation concluded that no City staff member released the records. I requested that the Commission take a public action affirming its members' commitment to all aspects of the civilian oversight process, including maintaining the confidentiality of police personnel records as required by law. The Commission did so, and also undertook a review of its Regulations to determine how to strengthen them in response to this incident.

On May 28, 2014, by way of a memorandum to the Commission, I invited the Chair and Vice Chair to participate in a dialogue with the Berkeley Police Association (BPA) and City staff about how to strengthen the process to prevent future breaches of confidentiality. I also informed the Commission that in response to the BPA's request for a stay of all interviews and Boards of Inquiry while this issue was undergoing review, I had agreed to a stay of 45 days based on BPA's agreement that all timelines associated with pending complaints and any complaints submitted during that period would be tolled.

On June 11, 2014, the PRC Regulations Subcommittee reviewed and recommended changes to Section IV and V of the PRC Regulations to substantially enhance the provisions regarding confidentiality. On June 17, 2014, I met with the PRC Chair, PRC Vice Chair, representatives of the BPA, the PRC Officer and the Deputy City Manager

Page 2 July 10, 2014

Re: Police Review Commission: Regulation Changes

and Actions Concerning Confidentiality

to discuss the situation and the changes to the Regulations. I requested that the BPA provide any suggested revisions to the Regulations prior to the PRC's next meeting. The BPA provided its proposed revisions to the Regulations the following week and they were reviewed by the City Attorney's Office. The City Attorney concluded that the proposed changes conflicted with the provisions of the original citizen's initiative (BMC Chapter 3.32), other provisions of the BMC, and Section 38 of the Charter, and accordingly that the proposed revisions could not be adopted. That analysis was provided to both the BPA and the Commission.

On June 25, 2014, the full Commission approved the changes recommended by its Regulations Subcommittee. On July 9, 2014, the Commission confirmed that the specific changes related to confidentiality are now in full force and effect, and implementation will not await the consideration of other, unrelated changes to the PRC Regulations. Please see Attachment 1 for a copy of the changes.

Should a violation of the confidentiality provisions occur, the Regulations now include provisions for disqualification of a commissioner from participation in a pending Board of Inquiry, as well as a possible prohibition from participating in future Boards of Inquiry. The regulations also now provide for notification of a violation to the appointing Councilmember or the City Council as a whole. These changes to the Regulations respect both the requirements of the citizen initiative that established the PRC (codified at BMC Chapter 3.32), as well as the City Council's authority to appoint and replace commissioners (see BMC Chapters 2.04 and 3.02).

In addition to the changes to the Regulations, at its June 11, 2014 meeting, the Commission adopted a resolution urging each commissioner to sign a declaration under penalty of perjury stating that she or he did not provide the Daily Californian, or any of its agents or representatives, with any confidential information relating to a Police Review Commission Board of Inquiry (see Attachment 2). All members of the PRC signed the declarations, with the exception of two commissioners who were temporarily assigned to the June 11th meeting and one commissioner who is on leave of absence and out of the country (see Attachment 3). The declarations reflect each commissioner's appreciation of the gravity of the situation, its impact on the integrity of the civilian oversight process and the necessity of "ensur[ing] that the citizens of Berkeley are afforded a meaningful and operative civillan oversight system, in keeping with the initiative enacted 41 years ago...."

The agreed upon period to stay BPA member involvement in PRC interviews and Boards of Inquiry concludes on July 12, 2014. Based on the actions taken to date by the Police Review Commission regarding the issue of confidentiality, I expect that BPA members will resume their participation in the PRC process upon the expiration of the

Page 3
July 10, 2014
Re: Police Review Commission: Regulation Changes and Actions Concerning Confidentiality

stay. I also expect that all parties will move forward with a shared understanding and appreciation of the vital role of civilian oversight of law enforcement in the Berkeley community.

Lastly, independently of the PRC's actions to strengthen its regulations, I requested an opinion from the Alameda County District Attorney on the Issue of whether the breach of confidential police personnel records was a crime, as the BPA asserted in its correspondence of May 1, 2014, regarding the breach. On July 9, 2014, the District Attorney informed us of her conclusion that the breach was not a crime.

Attachments

- 1. Revised PRC Regulations
- 2. PRC resolution re: confidentiality
- 3. Signed declarations by PRC

cc: Police Review Commission
William Rogers, Deputy City Manager
Michael K. Meehan, Chief of Police
Katherine J. Lee, PRC Officer
Ann-Marie Hogan, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Public Information Officer

Attachment 2

RESOLUTION OF THE POLICE REVIEW COMMISSION

Whereas it is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees and members of the public as required by law; and

Whereas the disclosure of a confidential Board of Inquiry (BOI) report from a PRC BOI to the Daily Californian violated the principles of trust and confidentiality necessary to our system; and

Whereas this violation of trust and confidentiality has raised concerns in the Berkeley Police Association (BPA) and the public about the integrity of the PRC process; and

Whereas the BPA has expressed concern that all steps taken thus far by the PRC and the City to address the improper disclosure have been insufficient; and

Whereas Berkeley Police Officers at this time are not participating in PRC investigations of complaints against police officers; and

Whereas our primary mission as Commissioners of the PRC is to maintain the process, and ensure that the citizens of Berkeley are afforded a meaningful and operative civilian oversight system, in keeping with the initiative enacted 41 years ago; and

Whereas the existing law fails to clearly articulate a penalty for violation of the confidentiality of peace officer personnel records; and

Whereas a person who signs a document under penalty of perjury can be prosecuted for the crime of perjury, if the document is published or disseminated with the intent that the statements in the document be accepted as truthful.

Be it therefore resolved that the PRC urges every Commissioner, upon passage of this resolution, to sign a declaration under penalty of perjury stating that s/he did not knowingly disclose confidential BOI reports to the Daily Californian, or to any of its representatives or agents;

Be it further resolved that the PRC publish these signed documents by letter to the Berkeley City Manager, and include the signed declarations as attachments. to the agenda packet for the next regular PRC meeting after they are signed.

The foregoing resolution was adopted by the Police Review Commission on June 11, 2014, by the following vote:

Ayes:

Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, Rogers, Shenoy,

and Halpern.

Noes:

None.

Abstain:

Huynh.

Absent:

Sherman, Zerrudo.

Attest:

Katherine J. Lee, PRC Officer

DECLARATION

Attachment 3

	\$Z	
	1, Sabara Allew , declare the following:	11/3
	I am a sitting commissioner on the Berkeley Police Review Commission.	
ŝ	I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission	4
	Board of Inquiry.	
5	declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.	
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	Executed this day of June, 2014, at Alameda County, California.	
	Rarbara Allen	
£	signature	
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Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page48 of 72

8	1, 10HD L. CARDOZA , declare the following:
	I am a sitting commissioner on the Berkeley Police Review Commission.
	I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.
	I declare under penalty of perjury under the laws of the State of California, that the
s. ²⁹	foregoing is true and correct.
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	Executed this // Chap of June, 2014, at Alameda County, California.
	John 2. Cardo a
	signature
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Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page49 of 72

	1, Kar.en Vowens 1 , declare the following:
	I am a sitting commissioner on the Berkeley Police Review Commission.
₩ ₩	I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission
11.14	and all and a second a second and a second a
¥	foregoing is true and correct. Confidential information.
	Executed this day of June, 2014, at Alameda County, California.
	Im
	signature

DECLARATION

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1, GEVILUE	PEREZVENEZ	, declare the f	ollowing:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this ____ day of June, 2014, at Alameda County, California.

signature

I have no Knowledge of the circumstances by which The Daily Cal obtained the confidential Information

1, Aru Koger	, declare the following:
I am a sitting commissioner on the Berke	ley Police Review Commission.
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Board of Inquiry. I have no kni which the Darly Californian obtain	ation relating to a Police Review Commission where of the cercums tasces be ed confidential suformation, that the
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Executed this day of June, 201	4, at Alameda County, California.
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signature Ann Rogers	e i e
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Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page52 of 72

DECLARATION

M . 9 12	(AC)
1, Child Vennie	, declare the following:
I am a sitting commissioner on the Berkele	y Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission

Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this ______ day of June, 2014, at Alameda County, California.

signature

DECLARATION

· - 1 1:	
, Oliver Zerrudo	, declare the following:
I am a sitting commissioner on the Berkeley	Police Review Commission.
I did not provide the Daily Californian, or any	y agent or representative of the Daily
Callfornian, with any confidential information	n relating to a Police Review Commission
Board of Inquiry.	

I have no knowledge of the circumstances by which the Daily Californian obtained the confidential information.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this _____ day of June, 2014, at Alameda County, California.

signature

DECLARATION OF KIRAN SHENOY

I, Kiran Shenoy, declare:

- 1. I am currently a Commissioner on the Berkeley Police Review Commission.
- 2. As a Commissioner, I have had access to confidential data or information related to Berkeley Police Department personnel. This confidential information was provided to me via witness testimony and through the electronic or hard-copy transmission of documents.
- 3. I have never provided the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to Berkeley Police Department personnel. Additionally, I have never disclosed confidential information relating to Berkeley Police Department personnel to any unauthorized person or organization.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on June 11, 2014

Kiran Shenoy

1	Harry S. Stern, SBN 176854	
2	Timothy K. Talbot, SBN 173456 Steven M. Betz, SBN 271543	
3	RAINS LUCIA STERN, PC	
4	220 Montgomery Street, Suite 484 San Francisco, CA 94104	
	Telephone: 925.609.1699	
5	Facsimile: 925.609.1690	
6	Email: hstern@rlslawyers.com	3
7	Attorneys for Gwendolyn Brown and Berkel	ley Police Association
8	SUPERIOR COURT	OF THE STATE OF CALIFORNIA
9	COUN	NTY OF ALAMEDA
10		
11	GWENDOLYN BROWN, BERKELEY	Case No.
12	POLICE ASSOCIATION,	
13	Plaintiffs,	DECLARATION OF HARRY S. STERN
14	V.	
15	CITY OF BERKELEY, BERKELEY	
16	POLICE REVIEW COMMISSION,	
17	Does 1-50,	
18	Defendants.	
19		
20	I, Harry S. Stern, declare as follows:	
21	1. I am an attorney at law licen	sed to practice in the State of California and before this
22	court.	
23	2. I am a principal at the law fir	rm Rains Lucia Stern, PC.
24	3. I make this declaration based	d upon my personal knowledge, and if called to testify as a
25	witness could and would testify competently	y to the matters contained herein.
26	4. On May 1, 2014, I sent a lett	ter to Christine Daniel, the City Manager of Berkeley,
27	concerning the leak of confidential informa	tion to the Daily Californian. A true and correct copy of this
28	letter is attached hereto as Exhibit E.	% <u>"</u> * ∥
20		ш п

Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page56 of 72

A true and correct copy of the Writ of Mandate issued by the Honorable Judge Winifred 5. Smith, dated March 14, 2007, in Alameda Case number 200205759 is attached hereto as Exhibit I. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated: August 4, 2014 HARRY S. STERN

RLS RAINS LUCIA STERN, PC

Harry S. Stern Attorney at Law HStern@RLSlawyers.com

May 1, 2014

VIA ELECTRONIC MAIL [MANAGER@CITYOFBERKELEY,INFO] & FIRST CLASS MAIL

Christine Daniel City Manager City of Berkeley 2180 Milvia Street Berkeley, CA 94704

Re: Release of Confidential Personnel Information

Dear Ms. Daniel:

I am writing to you on behalf of the Berkeley Police Association ("BPA") and individual members of the Police Department who were subjects of a Police Review Commission ("PRC") investigation concerning the death of Kayla Moore.

It has come to my attention that the PRC's findings have been "leaked" to the Daily Californian newspaper. This breach of confidentiality is not only outrageous, it is a crime.

Pursuant to Penal Code § 832.7 in conjunction with Government Code § 1222 and as further explained by the California Attorney General (Cal. Attorney General Opp. 99-503), the release of a California peace officer's personnel records is a criminal offense. In addition, the PRC is subject to civil liability for this invasion of privacy and defamation.

The City of Berkeley must take the following steps immediately: launch a criminal investigation by an independent authority in order to identify the perpetrator of this crime (it goes without saying that the offending commissioner be immediately removed from his or her position) and suspend all pending PRC investigations until the source of the leak is found.

Members of the BPA will not be participating in PRC inquiries until the City can assure the BPA that strong measures have been put in effect to protect the confidentiality of their personnel information.

The release of the findings undermines the credibility of the PRC; it is clear that at least one commissioner has an agenda that evidences bias against the accused officers. The leak is particularly egregious in that there is a lawsuit pending. The leak has the obvious effect of causing potential unwarranted prejudice against the named officers.

Christine Daniel

Re: Release of Confidential Personnel Information

May 1, 2014

Page 2

Thank you for your anticipated cooperation. Please do not hesitate to call me if you have any questions.

Sincerely,

RAINS LUGIA STERN, PC

Harry S. Stern

HSS:my

cc: Chris Stines, BPA President

Chief Meehan

Katherine Lee, PRC Director

1	Alison Berry Wilkinson (SBN 135890)			
2	RAINS, LUCIA & WILKINSON LLP 2300 Contra Costa Blvd., Suite 230			
3	Pleasant Hill, CA 94523			
4	Tel: (925) 609-1699 Fax: (925) 609-1690			
5	Attorneys for Petitioner			
6	BERKELY POLICE ASSOCIATION			
7				
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	FOR THE COUNTY OF ALAMEDA			
10	BERKELEY POLICE ASSOCIATION) Case Number: 2002-057569			
11) Petitioner/Plaintiff,) NOTICE OF ENTRY OF WRIT OF			
12) MANDATE			
13	vs.)			
14	CITY OF BERKELEY AND CITY OF) BERKELEY POLICE REVIEW)			
15	COMMISSION,			
16	Respondents/Defendants.			
17				
.18	- Control of the Cont			
19	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:			
20	PLEASE TAKE NOTICE that on March 14, 2007, the Court entered a WRIT OF			
21	MANDATE. A true and correct copy of the Order is attached hereto marked as Exhibit A.			
22				
23	Dated: 19 WH W Respectfully submitted, RAINS, LUCIA & WILKINSON LLP			
24				
25	· (Julimmy			
26	By: Alison Berry Wilkinson Attorney for Petitioner Berkeley Police Association			
27				
28	S S N			
3	1			
	NOTICE OF ENTRY OF WRIT OF MANDATE			

Alison Berry Wilkinson (SBN 135890) Ì RAINS, LUCIA & WILKINSON LLP 2 2300 Contra Costa Blvd., Suite 230 Pleasant Hill, CA 94523 Telephone: 925.609.1699 3 Facsimile: 925.609,1690 4 Attorneys for Petitioner - 5 BERKELEY POLICE ASSOCIATION б 7 SUPERIOR COURT OF CALIFORNIA 8 COUNTY OF ALAMEDA 9 10 Case No. 2002 057569 BERKELEY POLICE ASSOCIATION, 11 12 Petitioner/Plaintiff, WRIT OF MANDATE 13 [Code Civ. Proc. § 1087] ٧. 14 CITY OF BERKELEY and CITY OF BERKELEY POLICE REVIEW 15 COMMISSION 16 Respondents/Defendants. * 17 18 THE CHANDEBERKEDEY and the CITY OF BERKELEY POLICE REVIEW 19 TO: COMMISSION: 20 WHEREAS Pelitioner BERKELEY POLICE ASSOCIATION served and filed its duly 21 Verified Petition for a Writ of Mandate on July 11, 2002; 22 WHEREAS this Court issued its decision granting in part and denying in part Petitioner's 23 Motion for Summary Adjudication on February 9, 2007; 24 WHEREAS it appears to this Court that Petitioner has no other plain, speedy and 25 adequate remedy in the ordinary course of law: 26 111 27 111 - 28 7/RIT OF MANDATE Berkeley Ponce Association v. City of Berkeley, et al. Case No. 2002 057569

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Berkeley Police Association v. City of Berkeley, et. al. 1 Superior Court of California County of Alameda 2 Case No. 2002-057569 ~ PROOF OF SERVICE 3 I, Maggie Bedig, am a citizen of the United States, and am over 18 years of age. I am 4 employed in Contra Costa County and am not a party to the above-entitled action. My business 5 address is Rains, Lucia & Wilkinson LLP, 2300 Contra Costa Blvd., Suite 230, Pleasant Hill, б California 94523. On the date set forth below I served a true and correct copy(ies) of the 7 following document(s): 8 NOTICE OF ENTRY OF WRIT OF MANDATE 9 10 upon all parties addressed as follows: 11 City of Berkeley Manuela Albequerque, City Attorney Attn: Pamyla Means, City Clerk City of Berkeley 12 2180 Milvia Street, 4th Floor 2180 Milvia Street 13 Berkeley, CA 94704 Berkeley, CA 94704 14 City of Berkeley Police Review Commission Attn: Victoria Urbi 15 1947 Center Street, 3rd Floor Berkeley, CA 94704 ·16 17 said service was effected as indicated below: 18 VIA COURIER; by causing personal delivery by Western Messenger of the 19 X document(s) listed above to the person(s) at the address(es) set forth above. 20 HAND DELIVERY- I placed true and correct copies of the above-referenced 21 document(s) in a sealed envelope, addressed to the above-named parties, and personally delivered them. 22 23 FACSIMILE TRANSMISSION- I caused true and correct copies of the above- \Box referenced document(s) to be delivered by electronic facsimile transmission. 24 25 26 27 28 PROOF OF SERVICE

-							
1	☐ MAIL - I placed true and correct copies of the above-referenced docume	ent(s) in					
2	a sealed envelope, properly addressed to the above-named parties, with prepaid in a receptacle regularly maintained by the United States Post O	ostage fice					
3	prepare in a receptacie regularly maintained by the Officer States 10st Of						
4	I declare under penalty of perjury under the laws of the State of California that t	he					
5	foregoing is true and correct and was executed on June 19, 2007 at Pleasant Hill, California.						
6	UN lagric Sector						
7	Maggie Bedig						
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9.	PROOF OF SERVICE						

Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page67 of 72

1	Harry S. Stern, SBN 176854	
2	Timothy K. Talbot, SBN 173456 Steven M. Betz, SBN 271543	
3	RAINS LUCIA STERN, PC	
4	220 Montgomery Street, Suite 484 San Francisco, CA 94104	
5	Telephone: 925.609.1699	
6	Facsimile: 925.609.1690 Email: hstern@rlslawyers.com	e .
7	Attorneys for Gwendolyn Brown and Berke	lev Police Association
	Attorneys for Gwengoryn brown and beine	icy Tollee Association
8	SUPERIOR COURT	OF THE STATE OF CALIFORNIA
9	COU	NTY OF ALAMEDA
10		120
11	GWENDOLYN BROWN, BERKELEY	Case No.
12	POLICE ASSOCIATION,	DECLARATION OF STEVEN M. BETZ IN SUPPORT
13	Plaintiffs,	OF EX PARTE APPLICATION FOR TEMPORARY
14	v .	RESTRAINING ORDER
15	CITY OF BERKELEY, BERKELEY	
16	POLICE REVIEW COMMISSION, Does 1-50,	DATE: AUGUST 5, 2014 TIME: 9:00 A.M.
17		DEPT: 31 TRIAL DATE: NONE ISSUED
18	Defendants.	TRIAL DATE: NONE ISSUED
19		α 10
20	I, Steven M. Betz, declare as follows:	(4)
21	1. I am an attorney at law licens	sed to practice in the State of California and before this
22	court.	
23	2. I make this declaration in sup	pport of the Ex Parte Application for a Temporary
24	Restraining Order and based upon my perso	onal knowledge, and if called to testify as a witness could
25	and would testify competently to the matter	s contained herein.
26	3. On August 4, 2014, I notified	d the City of Berkeley City Manager and City Attorney's
27	office that Plaintiffs Brown and Berkeley Po	olice Association would move Ex Parte for a Temporary
28	Restraining Order on Tuesday, August 5. A	ttached hereto as Exhibit A is a true and correct copy of the
- 1		

Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page68 of 72

e-mail that I sent providing them notice.

4. I was advised by Deputy City Attorney, Sarah Reynoso, that the City would make an appearance at said hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 4, 2014

Steven M. Betz

Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page70 of 72

Dwaine Jones

From:

Steven Betz

Sent:

Monday, August 04, 2014 8:31 AM

To: Cc: Daniel, Christine manager@cityofberkeley.info; attorney@cityofberkeley.info

Subject:

Notice of Ex Parte Hearing

Hello Ms. Daniels,

I wanted to give you notice that tomorrow, August 5, 2014, the Berkeley Police Association intends to appear ex parte in Alameda Superior Court to request a temporary restraining order enjoining the Berkeley Police Review Commission and the City from ordering the appearance of BPA members before PRC/BOI hearings until the source of the recent leak is discovered and appropriate action is taken.

Our understanding is that two BPA members have been ordered to appear before the PRC on August 6. Should the City wish to be heard on the matter, it should send a representative to the ex parte calendar tomorrow morning. I will forward courtesy copies of our pleadings to your office later today.

Thank you, Steven Betz

Steven M. Betz Attorney at Law RAINS LUCIA STERN, PC (925)609-1699 Telephone (415)828-4913 Cellular (925)609-1690 Facsimile

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information in this electronic mail is intended for the named recipient(s) only. It may contain attorney-client privileged and confidential matter. Should you have received this electronic mail in error, please notify the sender immediately by replying to this electronic mail or by calling (925) 609-1699. Do not disclose the contents to anyone.

Thank you.

1

1	Harry S. Stern, SBN 176854	
2	Timothy K. Talbot, SBN 173456 Steven M. Betz, SBN 271543	
3	Rains Lucia Stern, PC	
4	220 Montgomery Street, Suite 484 San Francisco, CA 94104	
5	Telephone: 925.609.1699 Facsimile: 925.609.1690	
6	Email: hstern@rlslawyers.com	
7	Attorneys for Gwendolyn Brown and Berke	eley Police Association
8		
9	SUPERIOR COURT	OF THE STATE OF CALIFORNIA
10	COU	NTY OF ALAMEDA
11	GWENDOLYN BROWN, BERKELEY	Case No.
12	POLICE ASSOCIATION,	Case 110.
13	Plaintiffs,	EXHIBIT LIST
14	V.	
15	CITY OF BERKELEY, BERKELEY	
16	POLICE REVIEW COMMISSION, Does 1-50,	
17		
18	Defendants.	*
19	The following exhibits have been su	abmitted and attached with the complaint in the above-
20	entitled matter:	
21	1. A true and correct copy of C	ity of Berkeley Ordinance No. 4644-N.S. as Exhibit A.
22	2. A true and correct copy of ar	n article published in the Daily Californian on May 7, 2014
23	titled Leaked Documents Shed New Light of	n Kayla Moore's In-Custody Death as Exhibit B.
24	3. A true and correct copy of the	ne Berkeley Police Commission Rules and Regulations as
25	Exhibit C.	
26	4. A true and correct copy of a	memorandum from then-City Manager Michael Brown,
27	dated July 20, 1990, as Exhibit D.	
28	5. A true and correct copy of a	letter from Harry Stern to Christine Daniel, dated May 1,

Case3:14-cv-03950-EDL Document1-5 Filed09/02/14 Page72 of 72

2014, as Exhibit E. 1 A true and correct copy of a letter from current City Manager Christine Daniel, dated 6. 2 July 10, 2014, as Exhibit F. 3 A true and correct copy of the Resolution of the Police Review Commission as Exhibit 7. 4 G. 5 A true and correct copy of the signed declarations by the Police Review Commissioners 6 8. as Exhibit H. 7 A true and correct copy of the Writ of Mandate issued by the Honorable Judge Winifred 9. 8 Smith, dated March 14, 2007, is attached hereto as Exhibit I. 9 10 Respectfully submitted, Dated: August 4, 2014 11 RAINS LUCIA STERN, PC 12 13 Steven M. Betz 14 Attorney for GWENDOLYN BROWN and 15 BERKELEY POLICE ASSOCIATION 16 17 18 19 20 21 22 23 24 25 26 27 28

RLS RAINS LUCIA STERN, PC

Harry S. Stern Attorney at Law HStern@RLSlawyers.com

May 30, 2014

VIA ELECTRONIC MAIL [SREYNOSO@CI.BERKELEY.CA.US] & FIRST CLASS MAIL

Sarah Reynoso Assistant City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704

Re: Release of Confidential Personnel Information

Dear Sarah:

I'm writing in response to your May 16, 2014 letter (by the way, I hope you had a restful and enjoyable time off).

As an initial point, I want to reaffirm the Berkeley Police Association's ("BPA") appreciation and respect for civilian oversight in Berkeley. During the course of my most recent appearance before the PRC, I found the commissioners to be very insightful, intelligent and good-humored. They treated all of the involved officers with dignity and respect. Moreover, the PRC staff is extremely diligent and professional.

Thus, the leak of the PRC's findings by a lone commissioner was all the more shocking and disappointing.

It is beyond debate that this action was entirely improper. Penal Code section 832.7 specifies that this information is confidential. The Attorney General of the State of California has opined that such a leak is a criminal act. (Opinion 99-503 82 Ops.Cal.Atty.Gen. 246)

What is truly perplexing is the fact that the City apparently has not conducted an investigation that includes the commissioners themselves.

The proposals and discussions that have been circulated about new regulations and training for the commission are far off the mark. No one can reasonably say that they didn't know that leaking the findings was illegal.

I have previously requested in writing that this matter be referred to the District Attorney's office for investigation. It is my understanding that the first call to the DA's office was only made last week.

2300 Contra Costa Boulevard | Suite 500 | Pleasant Hill, CA | 94523 | T 925.609.1699 | F 925.609.1690 Ontario | Pleasant Hill | Sacramento | San Francisco | San Jose | Santa Rosa www.RLSlawyers.com

253



Sarah Reynoso

Re: Release of Confidential Personnel Information

May 30, 2014

Page 2

My mention of the possibility of a lawsuit in my May 1, 2014 letter to Christine Daniels was met with considerable angst. To be clear, the BPA views this as a last resort and disfavored option. However, it may be the only way to identify the person responsible for this serious transgression if the City will not take steps to identify the culprit.

Merely reaffirming oaths, passing new rules and, most significantly, failing to investigate the commissioners sends the message that the leak was acceptable and there will be no consequences for the breach.

The BPA cannot countenance this state of affairs. Someone observed that the leak was an aberration in the 40 year history of the PRC. I believe this is an accurate statement and find it intolerable that the actions of one person can undermine the credibility of such a venerable organization.

The BPA is very appreciative of the most recent decision by City Manager Christine Daniel to temporarily halt PRC proceedings while these matters are sorted out.

In conclusion, I once again, urge the City to conduct a thorough, impartial investigation that encompasses all of the likely sources of this illegal leak. Once the offending commissioner is identified, it is our expectation that, at a minimum, he will be removed from office.

Thank you for your anticipated cooperation. Please do not hesitate to call me if you any questions.

Sincerely,

RAINS LUCIA STERN, PC

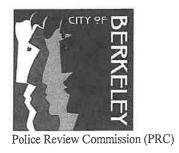
Harry S. Stern

HSS:my

cc:

Chris Stines, BPA President

Katherine Lee



CONFIDENTIAL

BOARD OF INQUIRY HEARING PACKET

DATE:

January 30, 2014

TO:

Board of Inquiry (BOI): Commissioners Michael Sherman, Alison Bernstein,

Barbara Allen, Karen Kiyo Lowhurst, George Perezvelez, Ann Rogers, Kiran Shenoy,

Oliver Zerrudo

FROM:

Byron Norris, PRC Investigator

Katherine Lee, PRC Officer

RE:

PRC COMPLAINT #2327

Complainant:

Kayla Xavier Moore - Deceased (Opened by PRC)

Subject Officer(s):

Officer Brown, Badge #16; Officer Tu, Badge #38; Officer Smith,

Badge #3; Officer Mathis, Badge #80; Officer Gardner, Badge

#121; and Officer Kastmiler, Badge #104.

Incident Date:

February 12, 2013

(On or about)

Incident Location:

2116 Allston Way, #514

Date Opened by PRC:

March 27, 2013

<u>ATTACHMENTS: PART ONE – PRC INVESTIGATION</u>

1.	Correspondence	Page	3
2.	Supplemental Report of Investigation	Page	11
3.	Berkeley Police Dept. (BPD) Report	Page	49
4.	BPD Photos	Page	69
5.	PRC Photos	Page	87
6.	City and County of San Francisco Records	Page	93

7.	Subject Officers' Statements	Page	103
	Officer Brown Officer Tu Officer Smith Officer Mathis Officer Gardner Officer Kastmiler		105 161 191 221 239 257
8.	Witness Officers' Statements Sergeant Phillips Sergeant Cardoza Captain Harris (expert witness)	Page	275 277 295 311
9.	Applicable BPD Policies	Page	317
ATT	ACHMENT: PART TWO - BPD INVESTIGATION	Page	379
10.	BPD In-Custody Death Investigation (original page numbering preserved)		

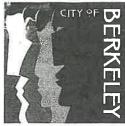
Cc: Subject Officers
Rep. Harry Stern, Esq.
BPD Chief/Internal Affairs
BPD Duty Command Officer
City Manager
File

ATTACHMENT #1

Correspondence

Mr. Stern's Letter to Ms. Simpson

Ms. Simpson's reply to Mr. Stern



Police Review Commission (PRC)

DATE:

March 21, 2014

TO:

Christine Daniel, City Manager

William Rogers, Deputy City Manager Michael Meehan, Chief of Police

FROM:

Katherine J. Lee, PRC Officer

RE:

COMPLAINT #2327 FINDINGS REPORT

In accordance with PRC Regulations, Section VII (E) (2), we are sending you the Board of Inquiry's Findings Report for the above-referenced complaint. A recording of the hearing is also available for your review.

occ: Officer G. Brown
Officer Tu
Officer Smith, Badge #3
Officer Gardner
Officer Mathis
Officer Kastmiler
Rep. Harry Stern, Esq.
Sarah Reynoso
File

Enc.: Findings Report

mgm





Police Review Commission (PRC)

CONFIDENTIAL

BOARD OF INQUIRY (BOI) FINDINGS REPORT

Report Date:

March 21, 2014

Incident Date:

On or about February 12, 2013

Board of Inquiry Date:

February 19 & 20, 2014

Complaint Number:

#2327

Complainant:

Kayla Xavier Moore – Deceased (Opened by PRC)

Subject Officers:

Officer Brown, Badge #16; Officer Tu, Badge #38; Officer Smith,

Badge #3; Officer Mathis, Badge #80; Officer Gardner, Badge

#121; Officer Kastmiler, Badge #104

Commissioners:

Michael Sherman, Barbara Allen, Alison Bernstein, Karen Kiyo

Lowhurst, Kiran Shenoy, and Oliver Zerrudo

This report is submitted in accordance with PRC Regulation, section VII (E) (2): "Within 30 calendar days of the hearing, the PRC Office shall submit a Finding Report, together with the Hearing Packet, to the City Manager and the Chief of Police."

Present at the BOI were: Subject Officer Gwendolyn Brown; Subject Officer Kenneth Tu; Subject Officer Brandon Smith; Subject Officer Brian Mathis; Subject Officer Timothy Gardner; Subject Officer Nikos Kastmiler; Witness Officer Sgt. Amber Phillips; Witness Officer Sgt. Benjamin Cardoza; Officers' attorneys Harry Stern and Jonathan Murphy; Duty Command Officer Capt. Cynthia Harris; PRC Officer Katherine Lee; and PRC Investigator Byron Norris. Commissioner Sherman chaired the hearing.

SUMMARY OF STAFF INVESTIGATION

On February 12, 2013, at approximately 11:49 p.m., Officers Brown, Tu, and Smith responded to a call for service at 2116 Allston Way. Mr. John Hayes reported a dispute between him and his roommate, Xavier Moore, and mentioned that Moore needed to "go to the psych ward." After

arriving on scene, outside the building, there was discussion between Officer Smith and Officer Brown about a person named Xavier Moore having a \$10,000 warrant out of San Francisco.

Officer Brown and Officer Tu made contact with Ms. Moore at the door of her apartment and made observations about Ms. Moore's demeanor. Officer Smith was also present, but departed with Mr. Hayes once it was determined he had a warrant. Officer Brown informed Ms. Moore that she had a warrant for her arrest. Officer Brown, with the assistance of Officer Tu, and later Officer Smith, attempted to take Ms. Moore into custody. The officers reported that Ms. Moore physically resisted and that the officers subsequently ended up inside the apartment trying to restrain Ms. Moore and place handcuffs on her.

Officers Mathis, Gardner, and Kastmiler arrived and assisted the other three officers in their attempt to get Ms. Moore into custody. Officers were eventually able to place Ms. Moore in handcuffs. Officer Mathis, with the assistance of Officer Gardner, also placed a leg restraint on Ms. Moore. While the officers were trying to restrain Ms. Moore, she was on a mattress and was at times on her stomach. At some point, Ms. Moore was rolled onto her side. A short time later, Ms. Moore stopped breathing and her pulse stopped. Officer Tu performed chest compressions and Officer Brown checked the airway. The Berkeley Fire Department subsequently transported Ms. Moore to Alta Bates Hospital where she was pronounced dead.

Investigator Karen Easling of the Alameda County Sheriff-Coroner's Office reported her findings of Ms. Moore's death as follows: "On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. Beaver indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly."

FINDINGS SUMMARY

Because this was a death case, 5 votes constituted the majority needed for the BOI to make a finding. The sustained allegation is in bold below.

	ALLEGATION	OFFICER	FINDING	VOTE
1_{∞}	Improper Police Procedure	Brown	Exonerated	6-0
2.	Improper Use of Force (Improper Physical Contact)	Brown	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Tu	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Smith	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Gardner	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Mathis	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Kastmiler	Not Sustained	6-0

	ALLEGATION	OFFICER	FINDING	VOTE
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Mathis	Unfounded	6-0
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Gardner	Unfounded	6-0
4.	Improper Police Procedure	Brown	Sustained	6-0
4.	Improper Police Procedure	Tu	No majority finding Sustained Not Sustained	4 2
4.	Improper Police Procedure	Smith	Unfounded	6-0
4.	Improper Police Procedure	Gardner	Not Sustained Unfounded	5 1
4.	Improper Police Procedure	Mathis	Unfounded	6-0
4.	Improper Police Procedure	Kastmiler	Not Sustained	6-0
5.	Improper Arrest, Search, Seizure, Stop or Detention (Improper Arrest)	Brown	No majority finding Not Sustained Sustained	4 2

DEFINITIONS

SUSTAINED:

The allegation did occur and the action is not justified.

NOT SUSTAINED:

The evidence fails to support the allegation, however it has not

been proven false.

UNFOUNDED:

The alleged act did not occur.

EXONERATED:

The alleged act did occur, but was lawful, justified and proper.

STANDARD OF PROOF:

The standard of evidence is "clear and convincing" — more than a

preponderance, but less than beyond a reasonable doubt.

FINDINGS

Allegation #1: IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officer Brown)

Whether subject officer failed to follow proper police procedure (General Order C-66 Crisis Intervention Team Policy) by not utilizing Crisis Intervention Team officer(s) during the contact with Ms. Moore.

Finding: Exonerated (Vote 6-0)

The Board voted to exonerate on this allegation because, even though the officer did not follow the procedures outlined in General Order C-66 to contact CIT officers, this failure was justified because no CIT-trained officers were on duty at the time of the contact with Ms. Moore.

Allegation #2: IMPROPER USE OF FORCE

--Improper Physical Contact (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler)

Whether subject officers used excessive force on Ms. Moore while taking her into custody, including, but not limited to: applying physical force to Ms. Moore's wrists, arms, ankles and/or body.

Finding: Not Sustained as to each of the six officers (Vote 6-0 as to each officer)

The Board found that, once the decision was made to take Ms. Moore into custody, the subject officers used reasonable force to counter her considerable resistance to being restrained. The Board noted that, according to the coroner's report, other than abrasions and contusions on Ms. Moore's wrists, there was no visible evidence of recent significant injury.

Allegation #3: IMPROPER USE OF FORCE

--Improper Use of Any Object: The Wrap (Officers Mathis and Gardner)

Whether subject officers improperly applied Wrap restraints on Ms. Moore and/or used such restraints without proper justification.

Finding: Unfounded as to both officers (Vote 6 - 0 as to both officers)

The Board found that the use of the Wrap was not improper and that there was proper justification for its use. The subject officers testified that Ms. Moore continued to resist their attempts to subdue her by kicking her legs, and that they were unable to stop her from kicking by using their hands or bodies only.

Allegation #4: IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler)

Whether, during the process of physically taking Ms. Moore into custody, subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: "Placing restrained persons in a face-down prone position for long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs."

(Officer Brown) Finding: Sustained (Vote 6-0)

Training and Information Bulletin 234 provides direction to Berkeley Police Officers on how to avoid "positional asphyxia." The bulletin states, in addition to the portion quoted above, "Individuals that are obese and/or have large bellies are high-risk candidates for sudden death due to positional asphyxia." The Board found that the most credible testimony established that Ms. Moore was prone (on her stomach) for most of the time that she was resisting, and that after she ceased resisting, with her hands cuffed behind her and her ankles in restraints, there was a period of minutes when she remained on her stomach and was not turned on her side.

The Board did not give great weight to the testimony of Ofc. Brown, finding that her recollections were inconsistent in substantial part with the record and the recollections of other Officers, and that particular misrecollections by Ofc. Brown called into question her overall

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reliability of her memory of the events.

As the lead officer, Ofc. Brown had the primary duty to follow the training and information bulletin, and she should have made certain that the period of time that Ms. Moore was prone on her stomach was not extended any longer than was absolutely necessary. Also, Ofc. Brown should have constantly monitored Ms. Moore's vital signs. The Board found that Ofc. Brown did not follow the training and information bulletin because she failed to turn (or to have other officers help her turn) Ms. Moore to her side as soon as practicable after she ceased resisting, and because she failed to constantly monitor her vital signs.

(Officer Tu) Finding: No Majority Finding (Vote 4 Sustained – 2 Not Sustained)

The Board could not agree on a majority finding.

(Officer Smith) **Finding: Unfounded** (Vote 6-0)

The Board believed that Officer Smith had left the apartment to attend to John Hayes, who was left in his patrol car, by the time Ms. Moore was subdued.

(Officer Gardner) Finding: Not Sustained (Vote 5 Not Sustained – 1 Unfounded)

Five Commissioners agreed that there was insufficient evidence to support the allegation that Ofc. Gardner deviated from Training and Information Bulletin 234, but that the allegation had not been proven false.

One Commissioner found that there was clear and convincing evidence that Ofc. Gardner did not deviate from Training and Information Bulletin 234.

(Officer Mathis) **Finding:** Unfounded (Vote 6-0)

The Board found that Officer Mathis had left the apartment to retrieve a spit hood from his patrol car when Ms. Moore stopped breathing.

(Officer Kastmiler) Finding: Not Sustained (Vote 6-0)

The Board unanimously agreed that there was insufficient evidence to support the allegation that Ofc. Kastmiler deviated from Training and Information Bulletin 234, but that the allegation had not been proven false.

Allegation #5: IMPROPER ARREST, SEARCH, SEIZURE, STOP or DETENTION
--Improper Arrest (Officer Brown)

Whether Officer Brown lacked sufficient knowledge to effectuate a valid arrest on the warrant; or probable cause to arrest or take into custody.

Finding: No Majority Finding (Vote 4 Not Sustained – 2 Sustained)

The Board was unable to agree on a majority finding.

CONFIDENTIAL BOI FINDINGS REPORT 3.21.2014 Page 6 of 6

SUBMITTED BY:

PRC Commissioners: Michael Sherman, Barbara Allen, Alison Bernstein, Karen Kiyo Lowhurst, Kiran Shenoy, and Oliver Zerrudo

Prepared by:

Katherine J. Nee, PRC Officer

cc:

Subject Officers

Rep. Harry Stern, Esq.

BPD Chief/Internal Affairs

City Manager City Attorney

File

CONFIDENTIAL **REVISED SUMMARY OF FINDINGS – COMPLAINT #2327**

FINDINGS DEFINITIONS

UNFOUNDED: The alleged act did not occur.

NOT SUSTAINED: The evidence fails to support the allegation, however it has not been

proven false.

EXONERATED: The alleged act did occur, but was lawful, justified and proper.

SUSTAINED: The allegation did occur and the action is not justified.

STANDARD OF PROOF: The standard of evidence is "clear and convincing"—more than preponderance, but less than beyond a reasonable doubt.

Please note that because this was a death case, 5 votes constituted the majority needed for the BOI to make a finding.

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
1.5	Improper Police Procedure	Brown	Exonerated	6-0
2.	Improper Use of Force (Improper Physical Contact)	Brown	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Tu	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Smith	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Gardner	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Mathis	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Kastmiler	Not Sustained	6-0
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Mathis	Unfounded	6-0
3.	Improper Use of Force (Improper Use of Any Object: the Wrap)	Gardner	Unfounded	6-0

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
4.	Improper Police Procedure	Brown	Sustained	6-0
4.	Improper Police Procedure	Tu	Sustained	4
			Not Sustained	2
			(No majority finding)	
4,	Improper Police Procedure	Smith	Unfounded	6-0
4.	Improper Police Procedure	Gardner	Not Sustained	5
		ja (Unfounded	1
4.	Improper Police Procedure	Mathis	Unfounded	6-0
4.	Improper Police Procedure	Kastmiler	Not Sustained	6-0
5,	Improper Arrest, Search,	Brown	Not Sustained	4
	Seizure, Stop or Detention		Sustained	2
			(No majority finding)	

CONFIDENTIAL SUMMARY OF FINDINGS – COMPLAINT #2327

FINDINGS DEFINITIONS

UNFOUNDED: The alleged act did not occur.

NOT SUSTAINED: The evidence fails to support the allegation, however it has not been proven false.

EXONERATED: The alleged act did occur, but was lawful, justified and proper.

SUSTAINED: The allegation did occur and the action is not justified.

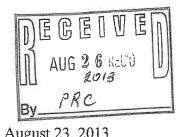
STANDARD OF PROOF: The standard of evidence is "clear and convincing"—more than preponderance, but less than beyond a reasonable doubt.

Please note that because this was a death case, 5 votes constituted the majority needed for the BOI to make a finding.

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
1.	Improper Police Procedure	Brown	Exonerated	6-0
2.	Improper Use of Force (Improper Physical Contact)	Brown	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Tu	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Smith	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Gardner	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Mathis	Not Sustained	6-0
2.	Improper Use of Force (Improper Physical Contact)	Kastmiler	Not Sustained	6-0
3,	Improper Use of Force (Improper Use of Any Object: the Wrap)	Mathis	Not Sustained Unfounded	5
3,,	Improper Use of Force (Improper Use of Any Object: the Wrap)	Gardner	Unfounded	6-0

	ALLEGATIONS	OFFICERS	FINDINGS	VOTE
4.	Improper Police Procedure	Brown	Sustained	6-0
4.	Improper Police Procedure	Tu	Sustained	4
			Not Sustained	2
			(No majority finding)	
4.	Improper Police Procedure	Smith	Unfounded	6-0
4.	Improper Police Procedure	Gardner	Not Sustained	5
			Unfounded	1
4.	Improper Police Procedure	Mathis	Unfounded	6-0
4.	Improper Police Procedure	Kastmiler	Not Sustained	6-0
5,	Improper Arrest, Search, Seizure, Stop or Detention	Brown	Not Sustained	4
	Scizure, Stop of Detention		Sustained	2
			(No majority finding)	

RLS RAINS LUCIA STERN, PC



Harry S. Stern Attorney at Law HStern@RLSlawyers.com

VIA ELECTRONIC MAIL [LSIMPSON@CI.BERKELEY.CA.US] & FIRST CLASS MAIL

Lucinda Simpson PRC Officer Police Review Commission 1947 Center Street, 3rd Floor Berkeley, CA 94704

Re: PRC Complaint # 2327 (Kayla Moore Investigation)

Dear Ms. Simpson:

As you know our office represents the subject officers with respect to the above complaint investigation. I am writing to set forth our formal observations and objections to the pending complaint on behalf of Officers Brown, Tu, Smith, Mathis, Gardner, Kastmiler as well as yet "unknown officers" (as specified in the Notice of Revised Allegations).

As an initial point, I want to acknowledge and incorporate by reference the issue raised by Berkeley Police Association President Chris Stines. Specifically, the officers involved in the underlying incident have suffered understandable stress and emotional upset as a result of their interaction with Ms. Moore. In my opinion, they all acted professionally and in keeping with the law and regulations of the Berkeley Police Department. None of them expected when they were summoned to Ms. Moore's apartment to be forced to deal with what turned out to be the unfortunate death of Ms. Moore. As the objective medical evidence revealed, Ms. Moore passed away due to her own pre-existing physical conditions and fatal use of illegal drugs. The officers that responded to the scene did everything in their power and training to handle this matter in the safest and least intrusive way possible. Ultimately, they undertook extensive life-saving efforts in order to try to revive Ms. Moore. The incident has had a profound effect on these officers and, subjecting them to additional questioning about the case (particularly when they have answered any and all reasonable questions previously posed) is only to force them to relive this traumatic event and forestall the healing process.

I would also like to direct your attention to the Police Review Commission's Rules, specifically II No. 4: "Sufficiency of Complaint." It is my position that the complaint as stated in the Notice of Allegations is insufficient under the PRC's rules to establish a *prima facie* case of misconduct. Rule 4a states that "Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege *prima facie* misconduct, or are frivolous

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Lucinda Simpson

Re: PRC Complaint # 2327 (Kayla Moore Investigation)

August 23, 2013

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or retaliatory shall be referred by the PRC officer...for administrative closure..." The allegations in the July 26, 2013 Notice do not meet this threshold.

1. IMPROPER POLICE PROCEDURE

Improper police procedure is alleged in the Notice that Officer Brown did not follow proper police procedure when she allegedly did not summon the Crisis Intervention Team during the contact with Ms. Moore pursuant to General Order C-66. In fact, it is my understanding that no Crisis Intervention Team officers were on duty on the night in question. Furthermore, pursuant to the relevant policies, this matter was handled as a response to a crime in progress. Ms. Moore's roommate/caretaker called because Ms. Moore was assaultive and out of control. It would not have been prudent to summon the Crisis Intervention Team (metal health) due to safety concerns.

2. IMPROPER USE OF FORCE

It is alleged that Officer Mathis, Officer Gardner, and "unknown officers" improperly applied the "wrap" on Ms. Moore or used such restraints without proper justification. In fact, Ms. Moore (in all likelihood in the throes of a cocaine-induced delirium) was extremely resistant and combative and did not comply with reasonable orders. The officers attempted to apply wrap restraints to her legs. The report on the investigation reveals that the officers' actions were in keeping with the manufacturer's suggested use of this device as well as the relevant Berkeley Police training concerning the wrap. Accordingly, there's no sufficient cause to believe that misconduct occurred.

3. IMPROPER USE OF FORCE/IMPROPER PHYSICAL CONTACT

It is alleged that Officers Brown, Tu, Smith, Gardner, Mathis, Kastmiler, and "unknown officers" used excessive force on Ms. Moore while taking her into custody including, but not limited to, applying physical force to her wrists, arms, ankles, and body. The Coroner's report conclusively rebuts this allegation. The officers in question had sufficient cause to take Ms. Moore into custody. Therefore, they were authorized by law by virtue of Penal Code section 835(a) and relevant Berkeley Police regulations to use reasonable force to restrain her. Ms. Moore died, as stated above, from pre-existing medical conditions and acute narcotics use according to the objective medical findings by the Coroner. There's no indication whatsoever that Ms. Moore suffered any injuries or effects from the police use of force. In fact, the investigation conducted by the Berkeley Police Homicide Section revealed that none of the officers involved kicked, hit, struck, or otherwise applied anything other than mere physical restraint to Ms. Moore.

Lucinda Simpson

Re: PRC Complaint # 2327 (Kayla Moore Investigation)

August 23, 2013

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4. IMPROPER POLICE PROCEDURE

It is alleged that Officers Brown, Tu, Smith, Gardner, Mathis, Kastmiler, and "unknown officers" violated Training and Information Bulletin #234 regarding sudden in-custody deaths which states that, "placing restrained persons in a face-down prone position for long periods of time, should be avoided..." The homicide investigation revealed that Ms. Moore was never placed in a face-down prone position for a long period of time. Ms. Moore was only on the ground for a very short period of time before officers immediately noticed that she had stopped breathing. Once the officers noticed she was in distress, they began immediate life-saving measures including CPR and summoning the Fire Department.

5. IMPROPER ARREST, SEARCH SEIZURE, STOP OR DETENTION

It is alleged that Officer Brown did not have sufficient knowledge to effectuate a valid arrest in this case. The law is very clear with respect to probable cause to arrest. See, *Illinois v. Gates.* Moreover and conclusively, Officer Brown reasonably believed that there was a valid arrest warrant outstanding for Ms. Moore. In fact, such a valid warrant did exist. Accordingly, Ms. Moore was properly taken into police custody at that time.

CONCLUSION

The Berkeley Police Department Homicide Section conducted an intensive investigation into this incident. The matter was reviewed by the Alameda County District Attorney's Office. All of the officers involved gave voluntary statements to criminal investigators. The Department provided the PRC with all of this information including the officers' statements. The most efficient and frankly emotionally sensitive thing to do would be for the PRC to review these statements in order to answer its own questions. All of the possible questions that could be posed concerning this incident have been asked and answered.

Thank you for your attention to this matter.

Sincerely,

RAINS LUCIA STERN, PC

Harry S. Stern

HSS:my

cc: Gwendolyn Brown (via e-mail)

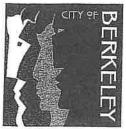
Lucinda Simpson

Re: PRC Complaint # 2327 (Kayla Moore Investigation)

August 23, 2013

Page 4

Brian Mathis (via e-mail)
Brandon Smith (via e-mail)
Kenneth Tu (via e-mail)
Nikos Kastmiler (via e-mail)
Tim Gardner (via e-mail)
Chris Stines, President, BPA (via e-mail)



Police Review Commission (PRC)

August 26, 2013

Harry S. Stern, Esq. Rains, Lucia, Stern PC 2300 Contra Costa Boulevard, Suite 500 Pleasant Hill, CA 94523

Re: PRC Complaint # 2327 (Kayla Moore Investigation)

Dear Mr. Stern,

I have received your letter dated August 23, 2013 which outlines your observations and objections. I appreciate you taking the time to share your concerns with me. However, as explained below, the PRC's investigation will move forward.

On March 27, 2013, the Police Review Commission voted to conduct its own *independent* investigation into this matter. The PRC also held several closed session meetings to consider the concerns initially raised by BPA President Stines in his letter and to finalize the allegations.

You cited to PRC Regulations section II.A.4., titled "Sufficiency of the Complaint" in your letter as allegedly requiring the case be referred for administrative closure. This provision of the Regulations does not apply here, as there is no complainant. Rather, this investigation falls under the provision of section II.A.3., titled "Unavailability of a Complainant" and which provides: "If there is no complainant able to initiate a complaint and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate." This regulation provides broad power for the PRC to act in a death in custody case and is consistent with its intention to conduct an independent investigation into this matter as outlined thus far in the notice of allegations. In fact, on July 24, 2013, the PRC finalized the allegations in this Complaint after reviewing the BPD homicide investigation and considering BPA President Stines' objections to the PRC's investigation.

Accordingly, since the PRC regulations authorize it to conduct an investigation of an in custody death, PRC staff will move forward by conducting separate interviews to those conducted by

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e-mail: prc@citvofberkeley.info http://www.cityofberkeley.info

BPD homicide investigators. The current investigation is being undertaken as a function of an independent civilian oversight body whose purview also encompasses inquiry into alleged non-criminal misconduct. To this extent, the focus of the investigation, as well as the questions posed during interviews and subsequent hearing, may differ significantly from the criminal investigation. The PRC Commissioners, at a Board of Inquiry, are empowered to then provide their own findings based on the totality of the evidence.

In carrying out the duties related to the investigation of this matter, PRC staff will make every effort to conduct the investigation, including the interviews, in a manner which is professional and respectful towards the well-being of all the officers and civilians.

Lastly, please note that your August 23, 2013 letter will become part of the record in this investigation and you will also have the opportunity to raise your objections at the Board of Inquiry hearing.

Sincerely,

Lucinda Simpson,

PRC Officer

Cc: Christine Daniel, City Manager

William Rogers, Deputy City Manager Sarah Reynoso, Assistant City Attorney

Police Review Commission

1947 Center Street, Third Floor, Berkeley, CA 94704
TEL: 510.981.4950 TDD: 510.981.6903 FAX: 510. 981.4955
e-mail: prc@cityofberkeley.info http://www.cityofberkeley.info

ATTACHMENT #2 Supplemental Report of Investigation



<u>CONFIDENTIAL</u> SUPPLEMENTAL REPORT OF INVESTIGATION

DATE:

January 29, 2014

TO:

Police Chief Meehan

c/o Internal Affairs, Berkeley Police Department

FROM:

Byron Norris, PRC Investigator¹

Katherine Lee, PRC Officer

RE:

COMPLAINT #2327; COMPLAINANT KAYLA XAVIER MOORE (DECEASED)

Subjects of Complaint:

Officer Brown, Badge #16; Officer Tu, Badge #38; Officer Smith, Badge

#3; Officer Mathis, Badge #80; Officer Gardner, Badge #121; Officer

Kastmiler, Badge #104.

Incident Date:

On or about February 12, 2013

Incident Site:

2116 Allston Way, #514, Berkeley, CA

Date Filed:

March 27, 2013

Tolling:

From February 12, 2013 to April 23, 2013

One year commences from April 23, 2013 and ends April 22, 2014

(pursuant to PRC Regs. III.B.2 and 3 and Gov. Code sections 3304(d)(1) and

3304(d)(2)A)

On March 27, 2013, the Police Review Commission voted to open an investigation into the in-custody death of Kayla Xavier Moore. This vote was made pursuant to PRC Regulation II.A.3: "If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate."

The investigation into this matter was tolled in accordance with PRC Regulations, section III.B.2 and 3 and Government Code sections 3304(d)(1) and (d)(2)(A) while this matter was under criminal investigation by the Berkeley Police Department. Government Code section 3304(d)(2)(A) provides that: If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period. The criminal report prepared by BPD was dated April 23, 2013 and was made available to PRC on May 3, 2013. The one year timeframe is considered tolled during the criminal investigation and commences from the date the criminal investigation was concluded.

¹This report was also prepared by former PRC Officer Lucinda Simpson.

COMPLAINT AND FACTUAL SUMMARY

On February 12, 2013, at approximately 11:49 p.m., Officers Brown, Tu, and Smith responded to a call for service at 2116 Allston Way. Mr. John Hayes reported a dispute between him and his roommate, Xavier Moore, and mentioned that Moore needed to "go to the psych ward." After arriving on scene, outside the building, there was discussion between Officer Smith and Officer Brown about a person named Xavier Moore having a \$10,000 warrant out of San Francisco.

Officer Brown and Officer Tu made contact with Ms. Moore at the door of her apartment and made observations about Ms. Moore's demeanor. Officer Smith was also present, but departed with Mr. Hayes once it was determined he had a warrant. Officer Brown informed Ms. Moore that she had a warrant for her arrest. Officer Brown, with the assistance of Officer Tu, and later Officer Smith, attempted to take Ms. Moore into custody. The officers reported that Ms. Moore physically resisted and that the officers subsequently ended up inside the apartment trying to restrain Ms. Moore and place handcuffs on her.

Officers Mathis, Gardner, and Kastmiler arrived and assisted the other three officers in their attempt to get Ms. Moore into custody. Officers were eventually able to place Ms. Moore in handcuffs. Officer Mathis, with the assistance of Officer Gardner, also placed a leg restraint on Ms. Moore. While the officers were trying to restrain Ms. Moore, she was on a mattress and was at times on her stomach. At some point, Ms. Moore was rolled onto her side. A short time later, Ms. Moore stopped breathing and her pulse stopped. Officer Tu performed chest compressions and Officer Brown checked the airway. The Berkeley Fire Department subsequently transported Ms. Moore to Alta Bates Hospital where she was pronounced dead.

Investigator Karen Easling of the Alameda County Sheriff-Coroner's Office reported her findings of Ms. Moore's death as follows: "On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. Beaver indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly."

ALLEGATIONS (5)

1. IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officer Brown)

Whether subject officer failed to follow proper police procedure (General Order C-66 Crisis Intervention Team Policy) by not utilizing Crisis Intervention Team officer(s) during the contact with Ms. Moore.

2. IMPROPER USE OF FORCE

--Improper Physical Contact (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler) Whether subject officers used excessive force on Ms. Moore while taking her into custody, including, but not limited to: applying physical force to Ms. Moore's wrists, arms, ankles and/or body.

3. IMPROPER USE OF FORCE

--Improper Use of Any Object: The Wrap (Officers Mathis and Gardner)

Whether subject officers improperly applied Wrap restraints on Ms. Moore and/or used such restraints without proper justification.

4. IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler) Whether, during the process of physically taking Ms. Moore into custody, subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: "placing restrained persons in a face-down prone position for long periods of time, should be avoided and never leave a restrained person in a face down prone position without constantly monitoring her vital signs."

5. IMPROPER ARREST, SEARCH, SEIZURE, STOP or DETENTION

--Improper Arrest (Officer Brown)

Whether Officer Brown had sufficient knowledge to effectuate a valid arrest on the warrant; or probable cause to arrest or take into custody.

PRC INTERVIEW SUMMARIES

Officer Brown - subject officer and case officer stated:

She responded to a Dispatch call of a 415 (dispute) involving roommates; the reporting party (Mr. Hayes) had been kicked out of the apartment by his roommate (Xavier Moore), who was schizophrenic, off medication, and possibly needed to be 5150'd. Officers Brown and Tu arrived at 2116 Allston Way. Officer Smith arrived soon afterwards. Officer Smith informed Officer Brown of a \$10,000 warrant for an *Xavier Moore* out of San Francisco, Officer Brown responded, "Well, this Xavier Moore just moved from San Francisco." Officer Smith replied, "Let me go back to my car just to make sure."

Mr. Hayes told the officers that Xavier had kicked him out because he would not give Xavier money for drugs, and that Xavier had been drinking heavily and doing lots of drugs. The officers and Mr. Hayes went to the apartment. At Officer Brown's direction, Mr. Hayes unlocked the door and stepped aside. Officer Brown called out for Xavier who then came to the door. Officer Brown explained the reason for the officers' presence and asked Xavier to tell her what was going on. Xavier said that the FBI was following him and that he did not feel safe. Xavier referred to Officer Brown by various female names and said that he saw people standing behind the officer. Xavier spoke of dinosaurs and told the officers that they were not real police officers. About this time, Officer Smith informed Officer Brown that Mr. Hayes had a warrant for \$5000. At Officer Brown's direction, Officer Smith confirmed the warrant for Mr. Hayes and transported him to the police station.

Officer Brown told Xavier that he had a warrant and needed to go to the police station to take care of it. Officer Brown also was going to have Xavier evaluated for 5150 once in custody. She had come to the conclusion that Xavier was delusional. Xavier denied having a warrant and became angry when Officer Brown reiterated that he did. Xavier said that he would go inside his apartment to contact the FBI to clear up the matter.

Officer Brown signaled to Officer Tu to go hands on. Officer Tu grabbed one of Xavier's arms and Officer Brown grabbed the other one. Xavier immediately began struggling and pulling away. Officer Brown told Xavier to stop resisting, but Xavier continued to resist and tried to free his wrists. Xavier jerked and they all fell into the apartment onto a mattress. Xavier landed on his side, rolled onto his stomach, and continued to struggle with officers. Officer Brown was positioned on one side of Xavier and Officer Tu was on the other side. Officers handcuffed one of Xavier's wrists but he buried his other wrist beneath himself.

More officers arrived and assisted in freeing Xavier's other arm and completing the handcuffing. Xavier continued to be combative and was kicking and bucking. The ankle restraint portion of the Wrap was placed on Xavier and a request for additional ankle and wrist restraints was made to the Berkeley Fire Department (BFD). Officers held onto Xavier as he continued to kick and buck. Officer Brown noticed that Xavier's chest was not moving and officers then turned him completely on his side. Xavier's chest moved up and down and then he moved his head from side to side. Officer Brown checked and felt Xavier's pulse. About a minute later, Xavier's chest was not rising. Officer Brown checked Xavier for a pulse but did not feel it. Officers removed the handcuffs from Xavier, pulled him onto the floor, and Officer Tu began CPR.

Officer Tu – subject officer and cover officer stated:

He responded to a call for assistance and arrived on scene at the same time as Officer Brown. Then, Officer Smith arrived. Officer Brown made contact with the reporting party, Mr. Hayes, outside of the residence. Officer Tu heard Officer Smith say that he was checking the names of the subjects involved in the call and had found a warrant out of San Francisco in the same name as the roommate which Mr.

Hayes was describing and with the same physical descriptors, but with a difference in the birthday. Officer Tu could not recall any specifics about the difference in birth date. Officer Brown said she was familiar or knew that Moore frequented San Francisco or lived there at one point.

The officers went upstairs where Hayes unlocked the door to the apartment. Officer Brown called into the apartment and Xavier Moore came to the door. As Officer Brown spoke to Ms. Moore, Officer Tu noticed that Moore was making statements about being followed by the FBI and was making statements which were paranoid and rambling and just didn't make sense. Moore and Hayes were identified at the scene and Officer Brown passed information to Officer Smith on a field identification card. Officer Smith appeared to be running a records check. Officer Smith arrested Mr. Hayes on a warrant at Officer Brown's direction and took him downstairs.

Officer Brown informed Ms. Moore that she had a warrant and needed to go with the officers. Ms. Moore became upset and said it was not true. Officer Brown gave Officer Tu a non-verbal signal to let him know that they were going to physically take Ms. Moore into custody. Officer Tu placed his hands on Ms. Moore's left wrist or forearm area at which time he and Officer Brown were pulled into the apartment. Moore broke free of Officer Tu's grasp and fell on to her left side on a low-lying mattress. Ms. Moore was kicking Officer Tu's legs and hands. Officer Tu dropped down to Moore's hips to control her legs. Ms. Moore continued to kick Officer Tu and kicked him off a few times. Officer Tu was kind of propped up with his back arched and was trying to grasp Moore's right arm. Officer Tu placed his abdomen on Moore's hips and used his body weight to keep the hips pinned down. Officer Tu's chest area was on Ms. Moore's low back area. Officer Brown was attempting to get control of Ms. Moore's left arm and Officer Tu applied a wristlock in order to gain control.

Officer Brown called for help and Officers Smith, Mathis, Gardner and Kastmiler arrived. Officer Smith helped to get Ms. Moore into handcuffs and she continued to kick and thrash about. Officer Tu noticed that a Wrap showed up and either Officer Mathis or Gardner applied the ankle portion to Ms. Moore's ankles. Officer Tu observed that Ms. Moore became compliant shortly after the ankle strap was put on and maybe less than a minute later she was then placed on her left side to prevent Positional Asphyxiation. Officer Brown was trying to talk to Ms. Moore but she was not answering questions. Officer Brown was monitoring Ms. Moore's vital signs and Officer Tu was informed that she was breathing and had a pulse. A short while later, Officer Brown said she could not find a pulse and did not think Ms. Moore was breathing. Ms. Moore was immediately rolled onto her back and taken out of handcuffs. Officer Tu then began doing chest compressions.

Officer Smith – subject officer and cover officer stated:

He was dispatched to a call from a reporting party (Mr. Hayes) who stated that his roommate had kicked him out, was on drugs, and had mental health issues. Dispatch reported the roommate's name as Xavier Moore. Officer Smith ran a records check and received a "hit" on a warrant out of San Francisco for \$10,000 that matched the name. When Officer Smith arrived on scene, he spoke with Officers Brown and Tu who were in front of the apartment complex. Officer Smith also spoke with Mr. Hayes, who told the officer that Ms. Moore needed to be 5150'd, was not on medication, and was drunk and high. Officer Smith conveyed the warrant information to Officers Brown and Tu. Officer Brown replied that an "Xavier Moore" used to live in San Francisco and that the warrant was probably for the roommate. Officer Smith asked Officer Brown if she knew the age of the Xavier Moore in San Francisco and Officer Brown said "42, around 42". Officer Smith then returned to his patrol car and looked at the birthday on the warrant which was 4/17/1952. Officer Smith told Officers Brown and Tu that he did not think that (Ms. Moore) that was the right person because the age did not match, but he did not recall either of them responding.

Once at the apartment, Mr. Hayes unlocked and opened the door and Officer Brown called out. Someone (who Officer Smith later determined was Xavier Moore) came to the door. Officer Brown explained the reason that officers were there and questioned Ms. Moore about what had happened. Initially, Ms. Moore was very calm and then immediately became extremely erratic. Ms. Moore said that she needed to contact the FBI to see if she could talk to the officers. At some point, Officer Brown completed a field identification card for Ms. Moore and handed it to Officer Smith who ran a records check on Ms. Moore and Mr. Hayes. Officer Smith did not recall which birth date he ran on Ms. Moore. Dispatch informed Officer Smith that Mr. Hayes had a warrant, and that "Xavier Moore" had caution codes for assault with a deadly weapon. Officer Smith informed Officer Brown of the warrant for Mr. Hayes and handwrote the caution code information on the field card and gave it to Officer Brown. With Officer Brown's consent, Officer Smith told Mr. Hayes that he would be arrested for the warrant and took him to his patrol car. Officer Smith departed with Mr. Hayes while Officers Brown and Tu were still talking with Ms. Moore at the door of her apartment.

About three to five minutes later, Officer Brown radioed for additional officers. Officer Smith returned to the apartment and ran into the doorway. He observed Ms. Moore lying prone on her stomach on a mattress; Officer Brown was to her left side and Officer Tu was to her right side. Officer Tu had Ms. Moore's right cuffed hand behind her back and Officer Brown was attempting to gain control of her left arm. Ms. Moore was kicking, screaming, and flopping around. Officer Smith assisted Officer Brown by getting control of Ms. Moore's left arm and getting her fully handcuffed. Officer Smith noticed other officers in the room and then got up and went back downstairs to check on Mr. Hayes. A minute or two later, an ambulance was called.

Officer Kastmiler – subject officer and cover officer stated:

He responded to a code 3 call for emergency cover. Officer Kastmiler arrived on scene and rode in the elevator with Officers Gardner and Mathis on the way upstairs. When he entered the apartment, he saw Officers Brown, Tu, and Smith struggling to control Ms. Moore who was lying stomach down on a mattress. Officer Kastmiler observed Ms. Moore flailing around and trying to get up. He stated that Ms. Moore was actively resisting by trying to kick the officers off and trying to raise her hands up while they were handcuffed behind her back. Officer Kastmiler assisted by attempting to control Ms. Moore's wrists and left leg. He grabbed Ms. Moore's wrists and held them. In addition, Officer Kastmiler used his shin and his knee on the back of Ms. Moore's left upper leg to keep her from continuing to kick. Officer Kastmiler recalled that Officers Brown and Smith were positioned near the upper portion of Ms. Moore's body, while Officer Tu was on his own right side towards Ms. Moore's legs. Officer Tu was also assisting in controlling Ms. Moore's legs and stopping her from kicking. Officer Kastmiler recalled that Officers Gardner and Mathis were positioned towards the lower half of Moore's body and were trying to control her legs. Officer Kastmiler knew that an ankle strap was applied to Ms. Moore's ankles, but did not recall who actually applied it.

Ms. Moore stopped resisting after the ankle strap was applied. Ms. Moore was on her side when an officer mentioned she did not have a pulse and was no longer breathing. Officer Kastmiler then checked Ms. Moore's respiration while another officer was checking her pulse. Officer Kastmiler stated that the handcuffs and ankle restraints were taken off by unknown officers and CPR was started. Officer Kastmiler held Ms. Moore's hands during that time in case she engaged in any further resistance.

Officer Mathis – subject officer and cover officer stated:

Officer Mathis responded to a call for additional officers needed. Officer Mathis arrived on scene at the same time as Officers Gardner and Kastmiler and the three took the elevator to an upstairs apartment. Upon entering, he observed officers struggling to control a person who he later learned was Xavier Moore. He recognized Officers Brown and Tu and later determined that the third officer was Officer Smith. Officer Mathis observed Ms. Moore was kicking as if in a swimming motion and was also bucking. Officer Tu was being kicked by Moore.

Officer Mathis went to control Ms. Moore's legs in an effort to control the thrashing. At the time, Ms. Moore was positioned chest down with a majority of her body on a futon mattress. Officer Mathis heard the officers giving commands to stop resisting and also heard Ms. Moore screaming and yelling. Officer Mathis initially tried to control Ms. Moore's ankles by holding her feet down, but he was kicked off quickly. He then repositioned himself and took one of Ms. Moore's legs and crossed it over the other. Officer Mathis used a portion of his leg to apply pressure somewhere on Ms. Moore's calf or shin area so that his hands would be free to apply an ankle strap. Officer Mathis stated that he was not sure exactly the area on Ms. Moore's body where he used his leg to apply pressure and was guessing. He stated it was definitely below the waist. Officer Mathis saw Sgt. Philips come in with a Wrap in her hand and he requested the ankle strap. Officer Mathis applied the ankle strap to Ms. Moore and recalled that he was not getting kicked anymore afterwards.

Officer Mathis then left the apartment to obtain a spit hood which someone had requested. Officer Mathis heard a broadcast that officers had started CPR on Ms. Moore. He escorted Berkeley Fire Department upstairs at which time he saw Officer Tu applying CPR to Ms. Moore who was positioned on her back.

Officer Gardner – subject officer and cover officer stated:

He responded to a call for help and additional cover. Upon arriving on scene, he observed Officers Brown, Tu, and Smith struggling to handcuff a "violently resisting individual." The individual was quite large, 350 to 400 pounds, and officers were kind of getting flung around. Ms. Moore was positioned partially on her side and kind of face down at the same time as officers tried to put her hands behind her back for handcuffing. Ms. Moore tried to lift up to a hands and knees position while officers struggled to hold her down. Officer Gardner thought that officers had placed one handcuff on one of Ms. Moore's wrists. Officer Gardner took Ms. Moore's other hand and closed it to the distance where she would be able to be handcuffed. He thought that another officer helped him due to the resistance.

Sergeant Phillips requested the Wrap and then handed it to Officer Mathis, who applied the ankle restraint portion of the Wrap. Officer Gardner helped secure Ms. Moore's feet by holding them down and Officer Mathis wrapped the ankle restraint around Ms. Moore's ankles. After the ankle restraint was put on, Ms. Moore gradually calmed down and she was repositioned at some point onto her side. Officer Gardner had his hands on Ms. Moore's ankles with a light touch to monitor her level of aggression and anticipate any further struggle. Officer Gardner said at some point someone said they did not think Ms. Moore was breathing. Officer Gardner recalled that Officer Brown was taking Ms. Moore's pulse and when it was determined that Ms. Moore was not breathing and did not have a pulse, he removed the handcuffs. Ms. Moore was rolled onto her back and the ankle restraint was removed. Officer Tu began CPR. Officer Gardner went outside the apartment and met Berkeley Fire Dept. at the elevator.

Sergeant Phillips – witness officer stated:

She was not a CIT trained officer as of the date of this incident. She responded to the scene upon hearing Officer Brown's call for assistance. She and Sergeant Cardoza arrived at the same time. Sergeant Cardoza had the Wrap Restraint. When the sergeants entered the apartment, Sergeant Phillips saw Officers Brown, Tu, Mathis, and Gardner struggling with an individual (Ms. Moore). Ms. Moore was lying on a bed on her stomach, and both her arms were handcuffed behind her back with two sets of handcuffs. Ms. Moore was violently kicking and resisting the officers who tried to hold her extremities. Officer Mathis tried to control Ms. Moore's legs and feet but was unable to; he was kicked around by Ms. Moore. Officer Mathis asked for the leg restraint and Sergeant Phillips handed it to him. Officer Mathis and Officer Gardner then applied the ankle restraint to Ms. Moore's legs.

Ms. Moore kind of calmed down and was rolled onto her left side facing the wall. Sgt. Phillips observed that Ms. Moore's eyes were open and she was breathing, but she was no longer fighting or resisting. Sergeant Phillips requested BFD to bring a gurney in order to transport. At some point, Officer Brown asked if Ms. Moore was breathing. Sgt. Phillips looked over and asked if Ms. Moore was breathing and couldn't tell. Then, Sgt. Phillips saw Ms. Moore open her eyes and take a breath. Sergeant Phillips radioed to confirm that BFD was coming code three and she stated that Ms. Moore was having difficulty breathing.

About 30 seconds to a minute later, Ms. Moore was no longer breathing. Sergeant Phillips radioed again that Ms. Moore was not breathing and they would begin CPR. Sgt. Phillips told the officers to remove the handcuffs and roll Ms. Moore onto her back. Officer Brown assisted to see if the airway was clear and Officer Tu performed chest compressions until BFD arrived and took over.

Sergeant Cardoza – witness officer stated:

He received a dispatch to provide assistance: a disturbance with a possible schizophrenic individual who was off medications and possibly intoxicated. Sgt. Cardoza brought along the Wrap Restraint and rode up in the elevator with Sgt. Phillips. He made it just past the threshold of the apartment and saw several officers attempting to restrain a large individual (Ms. Moore) on a mattress on the floor. Ms. Moore was in the prone position and was actively resisting, fighting, and attempting to kick the officers. Sergeant Cardoza recalled that Officers Mathis, Tu, and Brown were engaged with Ms. Moore but did not know whether there were more officers. Sgt. Cardoza recalled that Officer Mathis was attempting to restrain Ms. Moore's legs by trying to hang onto them using his hands and his weight. At some point, officers handcuffed Ms. Moore and applied an ankle restraint. Sgt. Cardoza could not recall which officer(s) put the ankle restraint on Ms. Moore or assisted in putting it on. Ms. Moore continued to actively resist and attempt to kick officers. At some point, BFD was requested along with a gurney and medical evaluation. Sergeant Cardoza left the apartment to meet BFD. When he left the apartment, Ms. Moore was still in a prone position and Sgt. Cardoza had not become aware of any information or observations to suggest Ms. Moore would need CPR.

Sgt. Cardoza waited for Berkeley Fire outside of the front of apartment. As the fire engine pulled up, Sergeant Cardoza heard over the radio that officers were initiating CPR. When Sergeant Cardoza escorted BFD personnel upstairs to the apartment, he saw Officer Tu performing check compressions on Ms. Moore who was on her back and un-handcuffed. Paramedics then took over.

APPLICABLE LAW

Use of Force

An officer may use force "as long as the force used is reasonable under the circumstances to protect the officer or members of the public or to maintain the status quo."

People v. McHugh (2004) 119 Cal. App. 4th 202, 211.

Arrest / Warrant

"When the seizure of a person amounts to an arrest, it must be supported by an arrest warrant or by probable cause. (citation omitted) Probable cause exists when the facts known to the arresting officer would persuade someone of "reasonable caution" that the person to be arrested has committed a crime. (citation omitted)" *People v. Celis* (2004) 33 Cal. 4th 667, 673.

"A police officer must use reasonable prudence and diligence to determine whether a party being arrested is the one described in the warrant. The officer may not refuse to act upon information offered him which discloses the warrant is being served on the wrong person. But, the prudence and diligence required of an arresting officer in determining whether to make an arrest must be balanced against the need to act swiftly and to make on-the-spot evaluations, often under chaotic conditions. (citation omitted). He need not choose between the possibility of being charged with dereliction of duty for failure to arrest and the possibility of being held to answer in damages for unlawful arrest or false imprisonment. (See Pen. Code, section 142)."

Lopez v. City of Oxnard (1989) 207 Cal. App. 3d 1, 7-8.

"Civil Code section 43.55 provides immunity to and precludes actions against "any peace officer who makes an arrest pursuant to a warrant of arrest regular on its face if the peace officer in making the arrest acts without malice and in the reasonable belief that the person arrested is the one referred to in the warrant." Penal Code section 847 precludes actions for civil liability against any peace officer for false imprisonment if he was acting within the scope of his authority and the arrest was lawful or if, at the time of the arrest, the officer had reasonable cause to believe the arrest was lawful."

Lopez v. City of Oxnard (1989) 207 Cal.App.3d 1, 7.

5150

"To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, take together with rational inferences from those facts, reasonably warrant his or her belief or suspicion. (citations omitted). Each case must be decided on the facts and circumstances presented to the officer at the time of the detention. (citation omitted), and the officer is justified in taking into account the past conduct, character, and reputation of the detainee." (citation omitted). *People v. Triplett* (First District) (1983) 144 Cal. App. 3d 283, 287-288.

"A peace officer (or other authorized person), however, is not required to make a medical diagnosis of mental disorder. It is sufficient if the officer, as a lay person, can articulate behavioral symptoms of mental disorder, either temporary or prolonged. An all-encompassing lay definition of mental disorder is difficult if not impossible to formulate. But, generally, mental disorder might be exhibited if a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate for the circumstances." *People v. Triplett* (First District) (1983) 144 Cal. App. 3d 283, 288.

STATUTES

(Some excerpted)

Penal Code 69. Obstructing or resisting executive officers in performance of their duties

Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.²

Penal Code 148. Resisting, delaying or obstructing officer

(a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.³

Penal Code 240; Assault Defined

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. 4

Penal Code 241; Assault; Punishment

(c) When an assault is committed against the person of a peace officer. . . . engaged in the performance of his or her duties . . . and the person committing the offense knows or reasonably should know that the victim is a peace officer. . . . engaged in the performance of his or her duties. . . . the assault is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

Penal Code 242 Battery Defined

A battery is any willful and unlawful use of force or violence upon the person of another.⁵

Penal Code 243 Battery; Punishment

(b) When a battery is committed against the person of a peace officer. . . . engaged in the performance of his or her duties, whether on or off duty, and the person committing the offense knows or reasonably should know that the victim is a peace officer. . . engaged in the performance of his or her

² "... the second type of offense within section 69, resisting an executive officer, is a general intent crime." *People v. Rasmussen* (2010) (First District) 189 Cal.App.4th 1411,1421.

CALIIC (California Jury Instructions Criminal) 3.30 Concurrence of Act and General Criminal Intent (May also be considered as to other footnotes related to general intent crimes).

Provides in pertinent part that: there must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime [that person] is acting with general criminal intent, even though [that person] may not know that [their] conduct is unlawful.)

³ With regard to Penal Code section 148(a), "The offense is a general intent crime. . . ." In re Muhammed C. (2002) 95 Cal.App.4th 1325, 1329.

⁴ CALJIC 9.00 comments section states that assault is a general intent crime.

⁵ According to *People v. Thurston* (1999) 71 Cal.App.4th 1050, 1054, battery is a general intent crime.

duties. . . . the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

Penal Code 22. Voluntary intoxication as excuse for crime; admissibility of evidence

- (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, malice aforethought, with which the accused committed the act.
- (b) Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.
- (c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

Penal Code 28. Evidence of mental disease, mental defect or mental disorder

(a) Evidence of a mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

Penal Code 142. Officer refusing to receive or arrest person charged with offense; punishment (a) Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.

Penal Code 834. Arrest defined; persons authorized to arrest

An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Penal Code 834a. Resistance to arrest

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code 835. Method of making arrest; amount of restraint

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

Penal Code 835a. Use of force to effect arrest, prevent escape or overcome resistance

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code 843. Arrest under warrant; force permissible

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

Welfare and Institutions Code 5150. Dangerous or gravely disabled person; taking into custody; basis of probable cause

When any person, as a result of mental disorder is a danger to others, or to himself or herself, or gravely disabled, a peace officer, may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Health Care Services as a facility for 72-hour treatment and evaluation.

Welfare and Institutions Code 5150. 05. Determination of probable cause to take person into custody or cause person to be taken into custody

- (a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.
- (b) For purposes of this section, "information about the historical course of the person's mental disorder" includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.

APPLICABLE BPD POLICIES

Apart from references to portions of the BPD policies noted below in the body of this report, all attached policies are incorporated by reference and may be considered in their entirety by the Board of Inquiry as to the allegations.

POLICE REGULATIONS – CHAPTER 4, PR 401

PR 401 Individual Responsibilities of Officers and Employees:

Each officer and employee of the department is individually responsible for:

h. Adherence to rules, regulations, orders and Departmental procedures.

GENERAL ORDER C-66: CRISIS INTERVENTION TEAM

Policy:

- 2 To maximize safety for officers, mental health consumers and the public, it is the policy of the Berkeley Police Department to utilize, whenever possible, Crisis Intervention Team Officers for specified mental health crises.
- 3 The Department's Crisis Intervention Team (CIT) is composed of specially trained officers whose function is to respond to incidents which involve a mental health crisis, where the officer's specialized skills may be used to resolve such an incident and to provide further assistance, beyond the actual call, for the individual involved.

- 4 The CIT Program has four primary objectives:
 - a) To attempt to de-escalate crisis situations.
 - b) To attempt to reduce the necessity for the use of force.
 - c) To attempt to reduce recidivism among mentally ill criminal offenders.
 - d) In collaboration with the community mental health system, consumer advocacy groups and the courts, to continuously work toward meeting these goals.

Procedures - General

10 - Whenever possible, CIT officers shall respond to specified calls for service involving individuals experiencing mental health crises. The use of CIT trained personnel is not limited to situations or calls involving the mentally ill, but extends to any circumstance wherein an individual is in need of crisis intervention due to a psychological/emotional crisis and/or when the individual is a danger to himself/herself, others or is gravely disabled.

Procedures - Dispatch/Patrol Officer Unit Requests

- 15 In situations other than those specified under the guidelines established for automatic dispatch protocol, call takers, dispatchers and patrol officers can prompt, and/or request the response of CIT personnel. Situations may include:
 - a) Calls for service when it becomes known that a subject may benefit from CIT intervention.
 - b) A family disturbance call when it is determined that an individual suffers from a mental illness.
 - c) On-scene patrol officers who determine a need and requests CIT personnel to respond.

GENERAL ORDER U-2: USE OF FORCE

<u>Purpose</u>

1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

Policy:

- 2 Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.
 - (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.
- 3 In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.
 - (a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.

(b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

Use of Non-Lethal Force:

19 - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

TRAINING AND INFORMATION BULLETIN #247: "THE WRAP" RESTRAINT

<u>Purpose</u>

Defensive tactics techniques are employed by law enforcement to control, and if necessary immobilize, violent or potentially combative people who have been taken into custody. This training bulletin is intended to familiarize Department personnel with "The WRAP" physical restraint device and guidelines for its use.

Device Description

The WRAP, manufactured by Safe Restraints, Inc., is designed as a temporary restraining device. Comprised of a Velcro-strapped leg panel, torso harness, ankle strap, and backside handcuff carabiner, the device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

USE OF THE WRAP

Consistent with policy detailed in General Order T-2, The WRAP may be used:

- To restrain a combative person.
- To prevent potential violent/combative behavior.
- To inhibit a violent subject's efforts to injure themselves.
- To prevent a violent subject from causing property damage.
- To facilitate safe physical transportation of violent/combative subjects.
- When conventional methods of restraint are not effective.

As with any restraint device, do not assume The WRAP is escape-proof. Once applied, THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.

A person restrained by The WRAP can be placed on their side or in a sitting position. This will increase the person's oxygen recovery rate and reduce the potential for respiratory fatigue or positional asphyxia.

Device Application

Only qualified personnel who have received training in the use of The WRAP should use this restraining device. Throughout the application of the WRAP, the subject must be physically controlled. Notwithstanding the subject's restraint, officers' should remain aware of the person's ability to bite, spit or use head strikes against them.

To safely apply The WRAP, it is recommended that no less than three (3) officers are involved in the

following procedure:

- 1) After controlling and handcuffing the subject, restrain him/her into a prone (face down) position.
- 2) Cross the subject's ankles and secure them with The WRAP's ankle strap. Ensure the strap's black Velcro side is facing outward and the hand-carry loop is facing toward the front of the subject's body.
- 3) Slide The WRAP's restraint panel under the subject's legs and place the label marked "Knees Here" under the his/her knees.
- 4) Tightly secure the panel's three Velcro straps, starting with the strap closest to the subject's feet.
- 5) Place the handcuff chain into the torso harness' carabiner and engage the carabiner's lock mechanism.
- 6) Maintain control of the subject and reorient him/her into a seated position.
- 7) Place the harness over the subject's head and direct its restraint straps under the person's arms to the front of his/her torso. Buckle the restraint straps to the harness and pull both straps snug (do not over-tighten.)
- 8) Attach the torso harness' front tether strap to the carabiner (located at the bottom of the device's restraint panel, near the ankles) and engage the carabiner's lock mechanism.
- 9) Pull the tether strap until the subject is held by the harness system in an upright position (do not over tighten.)

Safety Precautions

Officers who use The WRAP should always be mindful of the following safety issues:

- THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.
- The WRAP is a temporary restraint device and is not escape-proof.
- The WRAP should only be used by personnel trained in its function and application.
- All device restraint straps should be checked frequently for tightness, and adjusted, as necessary, until The WRAP is removed.
- The torso harness restraint straps should never be tightened to the point they interfere with the subject's ability to breathe.
- As soon as possible after being restrained in The WRAP, a prisoner should be placed in an upright sitting position or on their side to allow for respiratory recovery; relieve abdominal pressure as soon as practical to mitigate the potential for positional asphyxia.
- If a restrained subject complains of, or exhibits any of the following physiological conditions, immediate medical attention may be required (refer to General Order A-17):

Respiratory distress

Sudden quiet or inactivity

Chest pains, shooting pains down the arm

Change in facial color

Elevated temperature ("I'm burning up!")

Vomiting

GENERAL ORDER H-6: HANDCUFFING AND TEMPORARY RESTRAINT SYSTEMS

Purpose

The purpose of this General Order is to provide guidelines on the use of handcuffs and other temporary restraint systems.

Policy

It shall be the policy of this Department to handcuff or otherwise effectively restrain all arrested persons (excluding infraction citations where no transport is necessary), or detainees as reasonably necessary, to protect the lives and safety of officers, the public, and the person arrested.

Procedures - General

- 3 Officers shall restrain an arrested or detained person's hands behind the person's back, except as authorized in paragraph 6 of this Order.
- 4 Temporary restraint systems shall be employed in a manner consistent with Department-approved training.
 - (a) When employed, hand or ankle cuff systems shall be double locked, if so designed.
 - (b) Officers shall not employ temporary restraint systems in a manner that results in extraordinary discomfort or would facilitate the person's opportunity to escape.
- 5 Officers shall ensure that the restrained person is supervised at all times.
- 6 If a person's hands cannot be restrained behind his/her back because of large body mass, physical disability, injury, or obvious state of pregnancy, without causing unnecessary pain or aggravation of the injury or disability, officers will attempt to accommodate the person's condition by using alternative means of restraint.
 - (a) Alternative means of restraint include, but are not limited to:
 - (1) Handcuffing the person with his/her hands in front of his/her body.
 - (i) If a person is handcuffed in front, the officer should use supplemental restraining devices around the person's waist to prevent him/her from striking or choking an officer or others.
 - (2) Handcuffing the person behind the back with multiple sets of linked handcuffs.
 - (3) Use of a full or partial body restraint systems (e.g., the WRAP, ankle restraint systems, ambulance gurney with five-point straps, etc.)
 - (i) While initial use of handcuffs behind the back and hands-on control techniques may be necessary for officer safety, if circumstances dictate greater care should be taken during transportation, supplemental restraint devices and/or alternative transportation options should be considered.
 - (b) In deciding whether restraint of a person's hands behind his/her back will aggravate a physical disability, injury, or obvious state of pregnancy, the officer should consider the totality of circumstances, including:
 - (1) Observable signs of disability (e.g., partial paralysis, convulsive seizure activity, medic alert ID, disabled person placard, etc.);
 - (2) Statements of the person or others regarding the person's condition; and,
 - (3) Indications the person is at significant risk of positional asphyxiation (ref. Training Bulletin #234).

Detentions

- 9- Handcuffing of individuals who are not under arrest, but are being detained, should be done only if reasonably necessary.
- 10- The use of handcuffs during a detention, and reason for their application, shall be documented in a police report.

TRAINING AND INFORMATION BULLETIN #234: SUDDEN IN-CUSTODY DEATHS

Introduction

Sudden in-custody death is not a new phenomenon – it can occur at any time and for a variety of reasons. Any law enforcement agency may experience a sudden in-custody death. While rare; such deaths appear to be associated with the following syndromes:

Positional Asphyxia Cocaine Abuse and Toxicity Cocaine-Induced Excited Delirium Neuroleptic Malignant Syndrome

During the autopsies performed after in-custody sudden deaths, no evidence of these four syndromes is discovered other than the presence of cocaine and evidence of heart attack. Often, the only unusual signs noted by the Pathologist may be the bruises found on the body of the in-custody, which resulted from the struggle during the arrest.

It is important that all Berkeley Police Department personnel understand that preexisting risk factors, combined with the subject's body position when subdued or in transit, can compound the risk of a sudden death.

Positional Asphyxia

"Positional Asphyxia occurs when body position interferes with respiration, resulting in asphyxia. Positional Asphyxia deaths tend to occur in a similar manner: Maximally restrained subjects, unless seated upright in police vehicles, may become quiet and inactive after several minutes of transport. Respiratory difficulty is exhibited, and subjects subsequently stop breathing." Positional Asphyxia may occur when restrained suspects are placed in a prone position for a period of time, particularly stomach down.

A person lying on his/her stomach has trouble breathing when pressure is applied to the back. Often, this situation is compounded by a vicious cycle of suspect resistance and officer restraint:

- A suspect is restrained in a face-down position and breathing may be labored.
- Weight is applied to the subject's back the more weight means more severe chest compression.
- The individual experiences increased difficulty breathing.
- Due to oxygen deficiency, the person struggles more violently.
- The officer applies more compression to subdue the individual.

Individuals that are obese and/or have large bellies are high risk candidates for sudden death due to positional asphyxia.

Placing restrained persons in a face-down prone position for long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs.

GENERAL ORDER W-4: ARREST WARRANTS

Purpose

1 - The purpose of this General Order is to establish policy and procedures for the assignment, service, and administration of arrest warrants.

Policy

3 - Officers shall follow statutory and case law guidelines, and local rules and regulations when executing criminal processes associated with arrest warrants.

Procedures - General

- 4 Arrest warrant inquiries shall be made via computer-based, automated wanted persons databases (e.g., Arrest Warrant System (AWS), California Law Enforcement Telecommunications System (CLETS), National Criminal Information Center (NCIC), etc.).
 - (a) Arrest warrants entered into AWS as "active" shall be considered valid and available for service without further confirmation action, unless otherwise indicated on a particular AWS record.
 - (b) When an arrest warrant appears in AWS in a status other than "active", or is not in AWS, but appears as "active" in a wanted persons system other than AWS, the validity of that warrant shall be confirmed with the issuing agency prior to its service.
- 5 Communication Center personnel shall be responsible for the following activities related to arrest warrants:
 - (a) Respond to field requests for computer checks regarding outstanding arrest warrants.
 - (b) Facilitate status confirmation of outside agency arrest warrants.
 - (c) Request or communicate teletype abstracts regarding arrest warrants.
- 6 Officers involved in transportation of prisoners arrested pursuant to warrant shall adhere to procedures set forth in General Orders H-6 and T-2.

GENERAL ORDER I-16: MENTALLY DISORDERED PERSONS

Purpose

The purpose of this Order is to establish policy and procedure for the custody and/or transportation of mentally disordered persons to designated treatment facilities, and other related processes.

Policy

2- Employees are expected to comply with applicable law and the procedures described in this Order.

Definitions

- 5- <u>Gravely Disabled</u>: A person so impaired by a mental disorder that she cannot provide for her basic needs for food, clothing, or shelter.
- 6 "In Extremis Person": A person with a potential life-threatening illness or injury.
- 7 <u>Mentally Disordered Person:</u> A person who is a danger to herself, others, or is gravely disabled as a result of a mental disorder.

Procedures

Emergency Detention

8 - A mentally disordered person may be taken into custody by a sworn peace officer and placed in a facility designated by the County and approved by the State Department of Mental Health for emergency evaluation and treatment (ref. Welfare and Institutions Code (WI) 5150).

ALLEGATIONS (5)

Allegation #1: IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officer Brown)

Whether subject officer failed to follow proper police procedure (General Order C-66 Crisis Intervention Team Policy) by not utilizing Crisis Intervention Team officer(s) during the contact with Ms. Moore.

DISCUSSION

Officer Brown Officer Brown was asked if she remembered the first time she heard about General Order C-66 and she replied, "I believe it was after this incident." When asked how she heard about it, she replied, "It was on the complaint." She was then asked, "And was that the first time that you were aware of the existence of the general order?" Officer Brown replied, "Yes." (PRC Interview Transcript page 3: lines 13-23)

Officer Brown was asked, "And as of February 12 of this year, 2013, were you aware of General Order C-66 on that particular date, February 12, 2013?" Officer Brown replied, "No." She was then asked, "And at that time were you personally trained as a CIT officer? She answered, "No." (4: 4-11)

Officer Brown was asked, if there was any particular reason that she did not make an inquiry to call for a CIT trained officer to the location, and she responded, "I was not aware of a CIT officer." (27: 37-41)

Officer Brown was asked, "Were you aware of any obligation to call for CIT, or – She replied, "No." (28: 5-7)

Officer Tu, when asked whether he had any knowledge of any CIT trained officers, stated, "As far as I know, we had no CIT trained officers on duty." (3: 36-39)

Officer Smith, when asked whether the CIT was up and running, stated, "It may have been in its infancy stage. At that time I was not fully aware of where it was at." (2: 6-10)

Officer Kastmiler, when asked if he was aware of whether CIT was operational as of February 12, 2013, stated, "I don't believe it was. I believe they had made selections, but I believe they were waiting for the okay for training before this was actually implemented." (3: 46-50)

Officer Gardner was asked, "Were you trained on any specifics of the expectations of how to use it or what the expectations were of officers with regard to this order? He replied, "My recollection is – is that it hadn't been formulized yet – like the team hadn't been picked." (2: 48-49; 3: 1-5)

Sgt. Phillips was shown General Order C66 and was asked if at the time of the incident she had been informed of the release of the order. She responded, "Yes, we would've received that. We get

notification when the general orders come out." (16: 23-27) Sgt. Phillips was asked, "And other than receiving this general order, did you have any other knowledge as to, you know, what components were available for you to use at that time?" She replied, "From our department, specifically, no, there wasn't – there wasn't anything I thought in effect yet that we were going to be able to use and I'm not sure during that situation it would've even been appropriate given what had transpired – I'm not – so yeah." (16: 29-34)

Sgt. Cardoza was asked if he was aware of the existence of General Order C-66 prior to Feb. 12, 2013 and he replied, "Yes." He was then asked how he learned about its creation or coming into existence and he responded, "It was – I'm trying to think how to describe it – one of our officers, Shannon, is I guess the founder of the – I guess designer of this program, and he had come around and I believe talked to the patrol teams and just general information through via City email." (2: 27-36) Sgt. Cardoza was asked "And on February 12 of this year were you aware of any other CIT trained officers within your department?" He replied, "I think other than Officer Shannon, no." He was then asked, "No you were not aware or you didn't think there were any?" Sgt. Cardoza replied, "I – I wasn't – I can't say." He was then asked, "And as of February 12 of this year, were you aware of whether the CIT team was what's called operational?" Sgt. Cardoza replied, "I think they were still forming and they were still getting applications and training officers, because I know a lot of officers have just completed their training within the past several months." (3: 1-15)

Allegation #2: IMPROPER USE OF FORCE

--Improper Physical Contact (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler)

Whether subject officers used excessive force on Ms. Moore while taking her into custody, including, but not limited to: applying physical force to Ms. Moore's wrists, arms, ankles and/or body.

DISCUSSION

Officer Brown was asked, "And at some point did you have occasion to physically go put your hands on Xavier?" Officer Brown, replied, "Yes." When asked to describe how she did that, Officer Brown replied, "I looked at him and nodded and at that point Officer Tu grabbed one arm or the wrist and I grabbed the other and said, "You need to come with us." He immediately started struggling, pulling away." (31: 22-34). Officer Brown stated, "He continued to resist. He pulled back and start to turn and I still had his wrist and Officer Tu still had his wrist, and he jerked and we fell into the apartment and onto this mattress where we were still trying to get control of his wrists." (32: 6-8). When asked to describe the level of resistance, Officer Brown stated, "He – he was very violent. His actions were that he was not going to jail. He struggled with us. He tried to free his wrist. When we fell onto the mattress, he's still trying to pull away. We were able to get one wrist into cuffs. He buried the other wrist up under him. And we're constantly saying, "Stop resisting – stop resisting," and we're trying to free the wrist to put it in the cuff, 'cause we were able to get one on at that point." (32: 24-28)

Officer Brown was asked to describe any physical force she used on Xavier in order to put the handcuffs on and she replied, "Basically trying to get his arm from up under him and when that was done we applied the cuffs." (33: 38-42). Officer Brown was asked if she and Officer Tu were eventually able to get the handcuffs applied to both hands and she replied, "Not until the other officers came to assist." (36: 31-34)

Officer Brown described that Officer Tu was "trying to get the hand free as well." She stated that, "He ended up straddling him, 'cause Mr. Moore was partially on his side and on his stomach, so he was

partially straddling him." (34: 5-12) When asked if Officer Tu was standing or kneeling, Officer Brown stated, "No, he's kneeling on the mattress." When asked what part of Xavier's body Officer Tu was straddling over, she replied, "I believe it's basically down by the hip area." (34: 18-24). Officer Brown was asked where Officer Tu's hands were when he was straddling Xavier, and she replied, "He has one where he's holding that one that we have cuffed – and he's trying to get the other hand free." She went on to state that Officer Tu got off of Xavier after the handcuffing was achieved. (43: 25-48). "Once the cuffs were on, he wasn't straddling." (45: 3)

Officer Brown was asked if any other officers arrived and she responded, "Officer Mathis and Officer Gardner." (40: 30-32) When asked what Officers Mathis and Gardner were doing when they arrived, she replied, "They were helping us free his arms and when he was – when Mr. Moore was kicking I don't know who applied the ankle strap." 40: 50; 41: 1-2). She was asked where Officers Gardner and Mathis were positioned and she replied, "I have no idea." (41: 4-6)

When asked what happened after the ankle strap was put on, Officer Brown replied, "He's still trying to kick, he's still bucking, and we're just holding him." When asked to describe where she was holding, Officer Brown replied, "The same place, I'm holding him with my hands on his shoulder blade." (44:24-30). When asked "And what's the reason for why you put your hands there, why you were doing that?" Officer Brown replied, "Because he's still bucking." (39: 13-16)

Officer Tu was asked if he made physical contact with Ms. Moore and he replied, "I reached in and I – I believe I took hold of the left arm at that time and tried to place her in a rear wrist lock." (20: 28-31). Officer Tu described in part that Ms. Moore " – pretty violently tried to jerk away – and run back into the apartment." (21: 27-38). Officer Tu stated he was pulled into the apartment, at which time Ms. Moore broke free of his grasp and fell onto a mattress. (22: 12-19). He went on to describe that Ms. Moore was "kicking hard and making contact with my body." When asked which parts of his body, Officer Tu replied, "My legs, my hands." (22: 23-37)

When asked to describe the level of force that Ms. Moore was using to kick him, he replied, "A lot of force. Moore was kicking really hard, was kicking me back. I - in order to keep Moore from thrashing and kicking like that, I basically just dropped down to Moore's hips - that's how we're taught to control legs. The legs are strong and they're pretty dangerous and can cause some significant injuries, so I dropped down to the hips to try and control Moore's legs, but Moore just – Moore was still kicking really hard and kicking me up in the air and basically kicking me off a few times." (22: 41-46) In describing what he was doing with his body/hands, Officer Tu stated, "I call it a - I - I, in my own words, I sprawl and what I do is I – I drop the majority of my body weight – I put my abdomen on the hips, so that way my body weight can keep the hips penned down, and I can use my legs to try and control the subject's legs." (23: 7-9)

Officer Tu was asked if any part of his body was above Ms. Moore's waist and he stated, "Mm-hmmm. Well, my chest area is above on like the low back area – but I was kind of propped up. I was arching my back up because I was also using my hands to try to continue to control the arm, the right arm, or right arm, yeah right arm." Officer Tu was then asked, "What is Ms. Moore doing with her arms, are they both free?" He replied, "At this point they're both free. I had access to the right arm because it's the one facing me, flailing away, trying to break free of my grasp. I grabbed the arm again at the wrist and uh, it takes me a second but I was able to get the arm in a what we call a rear wrist lock behind the back." When asked what was happening with the other arm, he replied, "At that point I'm not too sure, I know Moore at one point rolls onto her stomach to try and pull away, and then at that point the left arm was completely under the body, and I know we could not access it at that point." (23: 11-30)

Officer Tu was asked, "And the reason that you applied your body weight to the hip area and the reason that you tried to put Ms. Moore into a – I think you called it a – wristlock, what was the reasoning for you doing those things?" Officer Tu responded, "The wristlock is standard handcuffing position. It's a good way to – you get leverage on the individual and try to immobilize the arm, so it prevents them from punching or reaching for weapons or anything. You have control of that arm – so now you can handcuff it and prevent them from harming you with it. Me dropping on the hips has a couple of purposes, and it allows me to – the big thing is it allows me to prevent or try to prevent a subject from kicking out further and prevents anyone from getting kicked, you know, we don't want to get kicked in the face or anything like that. So we try to immobilize the legs with that and, second, it also helps to try to keep the subject, you know, under control – the body under control." (24: 11-29)

Officer Tu described that Officer Brown at one point was "trying to get a hold of the other arm, the left arm." (24: 7-9). Officer Tu described that other officers arrived in a response to a call for cover and he stated that "The first one was Officer Smith and then after that I believe Math – Officer Mathis, Gardner and Kastmiler came." (24: 40-49) "Officer Smith assisted in getting control of the other arm, and we were able to handcuff at this point once both arms were secured." (25: 3-4) When asked what Officers Mathis, Gardner, and Kastmiler did, Officer Tu replied, ". . . I don't know the specifics, but I know they were also trying to help secure the legs. And I know one of them applied the Wrap, the ankle strap to the Wrap." (25: 6-9)

When asked how much time passed in his best approximation from the point where he first placed his hand on Ms. Moore to when she was successfully handcuffed, Officer Tu replied, "Mmmm – several minutes I would say. It took – it took – we're struggling on our own for – it felt like a long time – maybe a couple of minutes before – before the first officer came." (25: 23-25)

Officer Smith stated that he arrested Mr. Hayes and left Officer Brown and Officer Tu while they were still speaking to Ms. Moore. (20: 22-32) Officer Smith stated that he returned to the apartment when he heard Officer Brown ask for additional officers. Officer Smith stated "It sounded like there was a struggle going on and she needed immediate assistance." (21: 3-13)

Officer Smith ran into the doorway and saw Ms. Moore, Officer Brown and Officer Tu. (21: 45-48) Officer Smith stated that "It appeared that Ms. Moore was faced down on – on – partially on the mattress with her feet kind of hanging off. Officer Tu was to her right side. And Officer Brown was to her left side." "Officer Tu was struggling with – with what – at that point I didn't realize it, but he had actually had her right hand cuffed and had it behind, behind her back. And Officer Brown was attempting to get control of her left arm." (22: 1-10)

Officer Smith was asked what Ms. Moore was doing at that time and he replied, "Kicking, bucking, screaming, flopping around, saying, "I'm not going to." I kept hearing – it was such a short period of time – Officer Tu kept saying, "Give us your arm – give us your arm," and she kept saying – I recall her saying – "Fuck you. I'm not going to. I'm not going."" (22: 19-24)

Officer Smith stated, "I – I jumped in to assist, to try to get control of Ms. Moore." (23: 20) "I went to Ms. Moore's left side and was attempting to assist Officer Brown in trying to gain control of her left arm." (23: 47-48) Officer Smith was asked to describe what physical force he personally applied to Ms. Moore and where. He replied, "I – I think I hooked her left elbow – her arm was kind of under her body, so I didn't know if she had weapons; I don't know any of that, so I hooked my hand around her elbow and was trying to pull the arm out from under the body." (23: 50; 24: 1-4) Officer Smith was asked if he was eventually able to get control of Ms. Moore's arm and if she was eventually placed into handcuffs. Officer Smith stated, "Yes" to both questions. (24: 16-22)

Report of Investigation (#2327) Page 22 of 36 Officer Smith was asked, "During this time do you know how Officer Tu how he was positioned with regard to Ms. Moore, was he exerting any kind of physical pressure using his body weight?" He replied, "Yes, he – his legs-knee areas were on Ms. Moore buttock, leg, lower leg region." (25: 29-32) Officer Smith was asked what Ms. Moore was doing as he was continuing to place her in a second handcuff and he replied, "She's continuing to buck. With such force that Officer Tu is actually coming off of her body." (25: 34-38) With regard to Officer Tu's positioning, Officer Smith further stated, "He was – he was –he was kind of kneeling. He had – it's really hard to explain verbally how to do it or what he was doing. His knees and lower legs were on her buttock and thigh or hamstring areas, and he was kind of sitting in an upward position so he wasn't laying flat on her; he was kind of sitting up with the arm back." (25: 40-46)

Officer Smith was asked what physical force he saw Officer Brown apply to Ms. Moore. He replied, "She was – when I first got there she was trying to get a ho – get control of her left arm." (25: 50; 26: 1)

Officer Smith was asked, "Did you personally see any other officers apply any kind of physical contact or force to Ms. Moore after the handcuffing?" He replied, "No, I believe Officer Tu was just holding her left arm or her right arm." (26:45-48)

Officer Smith was asked what happened after the handcuffs were placed on both of Ms. Moore's hands and he replied, "At that point I turned around and noticed that there were other officers that were standing right behind me in the room, and I knew that I had Mr. Hayes in handcuffs in my – in the back of my car, so I got up and told them, "I need to go make sure that he's okay and that he's still there." (26: 12-18)

Officer Gardner, when asked what he'd seen when he entered Ms. Moore's apartment, stated, "I saw several officers including Gwen Brown in a - what looked like a fairly intensive struggle trying to handcuff a violently resisting individual." (5: 32-39)

"They were either, you know, to my first impression, an African-American or a Pacific Islander male, I thought, and quite large, 350 to 400 pounds. It seemed from the struggle that the officers were not even close to getting control of this person, they were kind of getting flung around." (5: 44-47)

When asked what Ms. Moore was doing, the officer stated, "My recollection was like kind of trying to lift up, you know, in getting to kind of a hands and knees position, and the officers were struggling to hold her down." (6: 21-22) "It was clear they weren't going to be able to handcuff her given the number of officers that were there." (6: 45-46)

When asked how officers were struggling to hold Ms. Moore down, the officer stated, "Just, you know, grabbing whatever body part to – to try to prevent her from rising up." (6: 32-33)

When asked what he did next, the officer stated, "I think I took Ms. Moore's other hand and closed it, you know, to the distance where we would be able to handcuff her, and I think someone had to help me because of the resistance." When asked if he applied any kind of force to Ms. Moore's hand or wrist to do that, the officer stated, "Just the – you know – the force to pull her hand behind her back." And when asked why he provided assistance, the officer stated, "Because they were obviously trying to handcuff her and she was resisting." (7: 16-29)

Officer Gardner was asked to describe any personal force that he applied to Ms. Moore's person and he responded, "I helped secure in handcuffs - by, you know, in the struggle; getting her - I think her left hand behind her back and then I may have been the one who closed the clasp or the hasp around her

wrist, and then I also helped hold her feet down to apply the ankle restraint for the Wrap." (9: 33-42)

Officer Gardner stated "combative" when asked to describe Ms. Moore's behavior while he was trying to get her into handcuffs. He stated that Ms. Moore was "just trying to rise up like I said earlier and not allowing her hands to be successfully pulled behind her back to facilitate the handcuffing." And when asked whether there was any change in Ms. Moore's demeanor or level of resistance after handcuffing, the officer stated, "I think at some point she calmed down." (10: 13-30)

Officer Mathis, when asked what he saw when he entered the apartment, stated, "... there was some type of struggle going on with a – with an individual – three officers struggling with – to control an individual on the ground." (4:3-8)

"The thing that I immediately noticed and – and I've – sorry, I've been down this road more than once, so I'm not particularly pleased in going back through it all over again. An individual was kicking like in a swimming kicking motion, bucking officer, like Officer Tu was lower – kind of down the lower extremities. I could see him because he's the taller – I just recognized him for some reason, and he was – he was getting kicked – being kicked by this individual." In describing the kicking, the officer stated, "Kind of, kind of, person's – person's face down so they're – they're like kicking back with their feet and kicking his (unintelligible). And by kicking up it's removing his body – we try and hold, you know, keep people from moving around. We're trying to control the situation and this individual by their kicking motion, like you would swim or were aggravated like if you have somebody on your back and you're kicking them, that's what they were doing, and they were doing it rather well." (4: 19-33)

When asked what he did at the point when he walked in, Officer Mathis stated, "I went to control the legs." (4: 40-42) When asked why he undertook that action, Officer Mathis stated, "Because that – by the person's actions it was – they weren't able to control this individual – they were able to thrash around, by controlling the legs you tend to control their thrashing." (4: 40-48) "So I tried to control the ankles at first just by holding the feet down and I got kicked off pretty – pretty quickly. So I then repositioned and I went back in and took one and crossed it over, the second, so it's a way that where I can put more pressure on the one to then control the second one. So rather than trying to use two hands on one on each leg, I can help with – focus on my – on one. And I don't remember how all of that, but I ended up having them crossed and was able to maintain – maintain my control." (6: 36-41)

When asked whether he then used his knee in any manner to secure Ms. Moore, Officer Mathis stated, "But, yeah, but I used – used a portion of my leg I guess I say here a knee, and I used a portion of my leg so I could use, my hands were free so then I could apply the strap." (6: 43-35; 7: 29-30) When asked what part of Ms. Moore's body that he applied his knee to, the officer stated, "Somewhere in the – I mean – to be specific, I don't recall exactly, I would have to say it's in the calf, calf shin area would be my, but I'd be guessing." (6: 36-44) And when asked whether he could say with certainty if he applied his knee below or above Ms. Moore's waist, the officer stated, "Oh, it's definitely below the waist." (8: 11-13)

Officer Kastmiler was asked to describe what he saw when he entered the apartment and he replied, "When I arrived I believe there was a large male laying stomach down on a mattress kind of in a corner of the room. There were several officers that were struggling to control this person who was flailing around and basically resisting and trying to get back up." (5: 1-3) Officer Kastmiler described the officers he initially observed struggling with Ms. Moore as Officers Brown, Tu and Smith. (5: 5-7)

When asked what he did after he entered the apartment, Officer Kastmiler stated, "I assisted by

controlling Mrs. Moore's hands, actually her wrists, and also her left leg." He further described that, "She was trying to bring her hands up either to knock myself or other officers away or to try and stand up, in my opinion." (8: 1-10). When asked if Ms. Moore was handcuffed at that time, Officer Kastmiler responded, "I believe so." (8: 12-14) Officer Kastmiler stated that he "Basically grabbed her wrists and held them there." Officer Kastmiler was asked, "In doing so did you exhibit or did you exert any kind of force on Ms. Moore's back?" He replied, "No." When asked if Ms. Moore made any effort to have contact with him, he replied, "I believe she tried to grab my hand while I was applying or while my hand was on her wrist when she tried to reach back with her fingers and grab me." (8: 42-45) Officer Kastmiler described that as this was going on, Ms. Moore was "Kicking her legs and then also trying to bring her arms back and upward." (9: 5-8)

Officer Kastmiler was asked if he used anything other than his hands to restrain Ms. Moore and he replied, "Yes, I believe I used my shin and my knee on the back of her left leg to try and keep her leg from continuing to kick." (9: 10-14) When asked if at any time he used his leg or shin above Ms. Moore's waist, Officer Kastmiler replied, "No." (9: 20-22). Officer Kastmiler was asked, "Did you personally have occasion to apply any force to any other area of Ms. Moore's body other than the leg or the hands?" He replied, "No." (9: 24-27)

When asked how Officers Tu, Smith and Brown were positioned as he was attending to the hands and upper leg, Officer Kastmiler replied, "I believe Officer Brown was towards the upper portion of Ms. Moore. I believe Officer Smith was there, too; so they were both on my left, and I believe Officer Tu was on the right side of me towards Ms. Moore's legs." (9: 33-38) When asked what Officer Brown was doing, he replied, "I – I don't recall really I mean I was doing my own thing with trying to control her hands and her legs, so I don't recall what she was doing at that time." When asked what Officer Tu was doing, Officer Kastmiler replied, "I believe he was trying to do the same thing that I was, which was controlling her legs and stopping her from kicking." (9: 40-48) Officer Kastmiler was not able to recall what Officer Smith was doing. Officer Kastmiler described that Officers Gardner and Mathis were present and were located towards the lower half of Ms. Moore's body "trying to control her legs." (10: 3-41)

Sgt. Phillips stated, "So Ms. Moore was on the bed. I believe was handcuffed at the time but was violently kind of kicking and resisting with the officers. Officer Brown I recall being up closer to Ms. Moore's head and Officer Tu was up on the – near the upper body as well. I just particularly remember Officer Mathis struggling with Ms. Moore's legs, because he was being kicked. He was being kind of kicked around and was unable to contain her – her legs and feet." (3: 34-39)

When asked what position Ms. Moore was in during the struggle, Sergeant Phillips stated, "On her stomach and I think head facing the wall and, yeah completely on her stomach with handcuffs, two sets of handcuffs I recall behind her back, and I could see the hair and only – I couldn't see her whole face, so I could see a portion of her face, but that was – that was during the struggle, yeah." (3: 43-46) "But there was no one on top of her because I could see a fully-exposed nude body there. It was more – everyone trying to hold extremities, so there was two officers I believe up towards the head and middle, and Officer Mathis I remember particularly was by himself with the ankles, trying to restrain the ankles." (4: 4-7)

When asked what Officer Tu was doing, Sgt. Phillips replied, "Honestly, I - I - I couldn't tell you exactly. I know he was just trying to hold someone near the arms area, the middle portion of the body. My focus was on Officer Mathis, because he was being – he had been kicked around and he's a large, you know, he's a large officer and so I was concerned with – the main concern seemed to be her legs at the time." (4: 16-23)

Sgt. Cardoza was asked what he saw when he first walked in and he replied, "She was actively resisting and fighting the officers." (4: 48-50) Sgt. Cardoza was asked, "Did you ever place your hands on Ms. Moore?" He replied, "No." (10: 23-25)

Allegation #3: IMPROPER USE OF FORCE

--Improper Use of Any Object: The Wrap (Officers Mathis and Gardner)

Whether subject officers improperly applied Wrap restraints on Ms. Moore and/or used such restraints without proper justification.

DISCUSSION

Officer Mathis, when asked what he saw when he entered the apartment, stated, "... there was some type of struggle going on with a - with an individual - three officers struggling with - to control an individual on the ground." (4: 3-8)

"The thing that I immediately noticed and – and I've – sorry, I've been down this road more than once, so I'm not particularly pleased in going back through it all over again. An individual was kicking like in a swimming kicking motion, bucking officer, like Officer Tu was lower – kind of down the lower extremities. I could see him because he's the taller – I just recognized him for some reason, and he was – he was getting kicked – being kicked by this individual." In describing the kicking, the officer stated, "Kind of, kind of, person's – person's face down so they're – they're like kicking back with their feet and kicking his (unintelligible). And by kicking up it's removing his body – we try and hold, you know, keep people from moving around. We're trying to control the situation and this individual by their kicking motion, like you would swim or were aggravated like if you have somebody on your back and you're kicking them, that's what they were doing, and they were doing it rather well." (4: 19-33)

"I saw Sergeant Phillips come in with a Wrap in her hand and I asked for the ankle strap from the Wrap." (8: 26-27) When asked whether he was able to get the ankle strap onto Ms. Moore's ankles, the officer stated, "Yes." (10: 25-27)

When asked whether he checked the tightness of the strap after he put it on Ms. Moore, Officer Mathis stated, "No...I mean there's no - it's a wide strap that goes on. Once you put it on, it's just meant to keep – keep the feet together and – and once you apply it there's no – it's not like a rope or something, that's like a pair of handcuffs that needs to be readjusted if that's what you're asking. It's not something of that nature. Once you put it on you – once you put the Velcro over, it stays that, it maintains that. It's not something that is going to be too tight or too – it's not something you re-adjust or double lock or do anything like that." (10: 36-44)

When asked whether he ever heard Ms. Moore make any statements that she was in medical distress, Officer Mathis stated, "I just heard yelling and screaming – I don't – I don't recall any specific statements at all." (13: 24-27)

In describing his training and experience in using the Wrap, Officer Mathis stated, "As long as I can remember, we've been trained – we get periodically trained from our FT unit on how to use it. I've been trained how to use it in – I had it applied to me numerous times because I'm a big guy, so they like to use me as an example. I couldn't tell you how many times over the years – maybe once a year – once, quite a lot, so I'm very familiar with it." And when asked how many times he personally used the Wrap the officer stated, "Over my career – couple dozen, maybe – maybe more. A couple of dozen would be an easy – easy guess." (9: 36-43; 9: 50; 10: 1-2)

Officer Gardner, when asked what he'd seen when he entered Ms. Moore's apartment, stated, "I saw several officers including Gwen Brown in a - what looked like a fairly intensive struggle trying to handcuff a violently resisting individual." (5: 32-39)

"They were either, you know, to my first impression, an African-American or a Pacific Islander male, I thought, and quite large, 350 to 400 pounds. It seemed from the struggle that the officers were not even close to getting control of this person, they were kind of getting flung around." (5: 44-47)

When asked what Ms. Moore was doing, the officer stated, "My recollection was like kind of trying to lift up, you know, in getting to kind of a hands and knees position, and the officers were struggling to hold her down." (6: 21-22) "It was clear they weren't going to be able to handcuff her given the number of officers that were there." (6: 45-46)

When asked whether someone made a decision to utilize the Wrap, the officer stated, "Yes, it was made — that decision was made when the sergeant — I can't remember her name — asked for it on the radio." (11: 5-6) When asked, the officer stated that the ankle restraint portion of the Wrap was applied to Ms. Moore. (11: 14-16) When asked who applied the ankle restraint, "I think she (Sgt. Phillips) handed it to Mathis and I secured Ms. Moore's feet and he (Officer Mathis) wrapped it around her ankles." When asked what he meant when he said he secured Ms. Moore's feet, the officer stated, "Held them down." And when asked what Ms. Moore was doing while he was holding her feet, the officer stated, "Struggling." (11: 28-47)

When asked what his rationale was for assisting in the placement of the ankle restraint on Ms. Moore, Officer Gardner stated, "It's part of the restraining of a combative person to affect the entire process of putting the Wrap on. It also I mean helps neutralize their feet, which when they're kicking are obviously quite dangerous." (12: 30-35)

When asked whether he made any observations about the tightness of the ankle restraint, Officer Gardner stated, "I mean it seemed appropriate, appropriate yeah." When asked, "Was there anything about the way it was applied that seemed out of sorts or unusual or inappropriate based on your observations and your training?" Officer Gardner replied, "No." (12: 37-45)

Officer Gardner stated "No" when asked whether Ms. Moore, at any time in his presence, made any statements that she was in pain. (16: 18-20)

Officer Brown was asked if Xavier was compliant after the handcuffs were put on and she said, "No." (37: 23-25) She was asked what Xavier was doing after the cuffs were put on and she replied, "He's kicking, bucking; he's still —" "He's still being very, very combative." (37: 7-17)

Officer Brown as was asked if at some point the ankle strap was put on and she replied, "Yes." Officer Brown was asked if she saw it being put on and she replied, "I don't recall seeing it being it put on but I saw it after it was on." In response to further questioning, she stated, ""I didn't see it being put on, but once it was on, I saw nothing that was improper." (41: 25-28)

Officer Kastmiler stated that he recalled that Officer Mathis and Gardner were present and that they were positioned towards the lower half of Ms. Moore's body trying to control her legs. (10: 11-41) Officer Kastmiler could not recall or remember which officer applied, or assisted in applying the ankle strap. (11: 14-29). Officer Kastmiler was asked if he had any part or assistance in applying the ankle Wrap and he replied, "I don't think so."

Officer Kastmiler was asked how Ms. Moore was positioned when the ankle strap was applied. Officer Kastmiler stated, "I believe Moore was still in a stomach down position when the leg restraints were applied" and then after reviewing his earlier interview, he stated, "I believe Ms. Moore was actually laying on her side when we deployed the leg restraints." (12: 31-46; 13: 3-10)

When asked if there was any change in Ms. Moore's physical activity when the ankle strap was put on, Officer Kastmiler replied, "Yes, I believe she stopped resisting after the – only the ankle strap was applied." (11: 37-40)

Officer Kastmiler was asked if there was any reason Ms. Moore was allowed to remain on her side and was not put into a seated position, to which he replied, "I don't recall other than she was a very large individual and it was very difficult to move her around. I remember that." (16: 4-8)

Officer Smith was asked, "How would you describe Ms. Moore even when she's handcuffed – was she submissive or what was she doing?" He replied, "No, not at all, she continued to kick and buck and yell and pull away and continued her – her combativeness." (26: 39-43)

"Immediately, once we had her handcuffed, I turned around and saw other officers and I went downstairs to be with Mr. Hayes." (27: 29-30)

Officer Smith was asked, "And did you ever see any kind of a Wrap device or a portion being applied to Ms. Moore?" He replied, "No." (26: 50; 27: 1)

Officer Tu was asked if Ms. Moore was compliant after she was placed in handcuffs and he replied, "No." When asked to then describe what she was doing, Officer Tu stated, "Yeah, continued to try and struggle, continued bucking the hips, kicking away, just thrashing about." (25: 40-47) With regard to the Wrap, Officer Tu stated that one appeared on scene, but he did not know who requested it. (26: 3-17) Officer Tu stated that the ankle portion was put on by "Either Officer Mathis or Officer Gardner." (26: 22-26).

Sgt. Phillips stated, "So Ms. Moore was on the bed. I believe was handcuffed at the time but was violently kind of kicking and resisting with the officers. Officer Brown I recall being up closer to Ms. Moore's head and Officer Tu was up on the – near the upper body as well. I just particularly remember Officer Mathis struggling with Ms. Moore's legs, because he was being kicked. He was being kind of kicked around and was unable to contain her – her legs and feet." (3: 34-39).

When asked what Officer Tu was doing, Sgt. Phillips replied, "Honestly, I – I – I couldn't tell you exactly. I know he was just trying to hold someone near the arms area, the middle portion of the body. My focus was on Officer Mathis, because he was being – he had been kicked around and he's a large, you know, he's a large officer and so I was concerned with – the main concern seemed to be her legs at the time." (4: 16-23). When asked, to provide more detail about how Ms. Moore was kicking or struggling with Officer Mathis, Sgt. Phillips stated, "Yeah, just violently kicking at him kind of bucking him off of the bed and then he yelled to us, Sgt. Cardoza and I, "Give me the ankle – the leg straps – I have to restrain her ankles." Sgt. Phillips was asked how Officer Mathis was positioned during that time and she replied, "I think he was, what I recall was him being at the end of the futon holding, trying to hold down over holding down the bottom part of the legs likes the calfs and ankle area, and Ms. Moore was kicking at him, and so he was kind of being thrown back from the bed." (4: 25-36).

Sgt. Phillips additionally stated, "As Sergeant Cardoza and I got into the building, he said, "I have the

Wrap," which is our restraint device and I said, "Okay." So, when we got in, we immediately took it out of the bag in case they were going to need it. And then Officer Mathis asked for one of us to hand him the leg restraint and I handed it to him." When asked what he did with it, Sgt. Phillips replied, "He – him and I believe Officer Gardner, they restrained her legs." (5: 12-19). Sgt. Phillips stated that just the ankles restraints were applied. (6: 24-40)

Sergeant Cardoza, when asked if he brought any equipment with him to the incident scene, stated that he brought the Wrap. When asked why he brought the Wrap, the sergeant stated, "I can't recall whether the officers asked for it or I brought it just in case." (4: 17-23)

Sergeant Cardoza, when asked what he saw when he entered the threshold of an apartment, stated, "I saw several officers attempting to restrain a large individual on I guess what was a mattress on the floor in the main room of the apartment." (4: 33-36)

When asked what Ms. Moore was doing when he first walked in the apartment, Sergeant Cardoza stated, "She was actively resisting and fighting the officers." When asked if she was doing anything with her legs, he replied, "She's attempting to kick the officers." (4: 48-50; 5: 1-3)

When asked whether someone tried to put the Wrap on Ms. Moore, Sergeant Cardoza stated, "I think they started but never were able to complete it." And when asked was any part of it put on Ms. Moore, the sergeant stated, "The ankle restraint." (8: 14-24) Sgt. Cardoza was asked how Ms. Moore was positioned when the ankle strap was put on and he replied, "I think the same, prone." (10: 15-17)

Allegation #4: IMPROPER POLICE PROCEDURE

--Improper Police Procedure (Officers Brown, Tu, Smith, Gardner, Mathis, and Kastmiler)

Whether, during the process of physically taking Ms. Moore into custody, subject officers violated Training and Information Bulletin 234: Sudden In-Custody Deaths, which states that: "placing restrained persons in a face-down prone position for long periods of time, should be avoided and never leave a restrained person in a face down prone position without constantly monitoring her vital signs."

DISCUSSION

Officer Brown was asked to describe where she was positioned after the handcuffs were applied and she responded, "I'm still on the same side of him that I was in on when we fell onto the mattress." "Closer up by the shoulder blades." (37: 44-50). Officer Brown was asked to describe subsequent holding of Xavier and she replied, "With my hands I'm holding him across the shoulder blades." (38: 9-25) When asked to describe how her hands were positioned and what they were doing, Officer Brown described, "They're flat — on the shoulder blades." When asked to describe how much pressure, if any, she was using, Officer Brown replied, "Not very much pressure." (39: 1-11).

When asked how Xavier was positioned after the handcuffs and ankle straps were put on, Officer Brown stated, "He's still partially on his side and on his – partially on his stomach." (45: 44-50; 50: 1)

When asked what was the first moment she noticed any potential issue with Xavier's breathing, Officer Brown replied, "Well, I noticed I did not see his chest moving, and at that point I told them "I don't think he's breathing," and we turned him to his side — completely on his side. And then I could see the chest moving back-and-forth, and at that point he moved his head from side-to-side." (47: 12-18)

When asked how much time Xavier spent in that position before being moved completely onto the side, Officer Brown stated, "Not very long." When asked why Xavier was not initially put completely on the side, the officer stated, "Because he's still resisting." And when asked how many officers it took to reposition Xavier completely onto the side, the officer stated, "I don't know if two or three officers came to assist at that point, but all the officers that were there helped get him to the side." (47: 33-43; 48: 1-2)

When asked if she noticed any change in Xavier's breathing after Xavier is moved completely onto the side, Officer Brown stated, "Yes, about a minute later I didn't see his chest rising again and I told them, "I don't think he's breathing," I checked his carotid and I didn't feel a pulse, and I told them, "He's not breathing. He's not breathing." At that point, we got him out of the cuffs, pulled him onto the floor and Officer Tu started CPR." (48: 37-43)

When Officer Brown was asked if there was any reason that Xavier was not put in an upright seated position before she observed Xavier's breathing stop, the officer stated, "No." And when asked if she would have been able to have Xavier in an upright seated position, the officer stated, "Would we - from the mattress? With his ankles? Probably, I would have to speculate that we didn't want him to start his resisting again." (49: 20-28)

Officer Smith, when asked whether he applied or observed any other officer apply pressure to Ms. Moore's back while she was on her stomach, stated, "I did not." When asked if he made any effort to monitor Ms. Moore's vital signs while she was on her stomach, the officer stated, "I did not." And when asked if there was any reason that he did not do that, the officer stated, "Immediately once we had her handcuffed, I turned around and saw other officers and I went downstairs to be with Mr. Hayes." (27: 12-30)

When Officer Smith was asked the duration of time that Ms. Moore was in the face down or prone position while he was on scene, the officer stated, "It was a minimal amount of time. Like I said before, from the time that I walked through the door to the actual handcuffing was at most a minute and a half." (29: 5-9)

Officer Tu stated, "Once – once Ms. Moore stopped struggling, we put Ms. Moore on her left side – I believe it was the left side." When asked why he did that the officer stated, "We did that to prevent a Positional Asphyxiation." (27: 14-19)

When asked if any officer was monitoring whether Ms. Moore was breathing or had a pulse at that time she is on her side, Officer Tu stated, "Yes." And when asked who was doing that, the officer stated, "Officer Brown." (27: 46-49; 28: 1-3)

When asked if there was a reason that he or the other officers did not sit Ms. Moore in an upright position as opposed to rolling her on her side, Officer Tu stated, "From what I could recall, we were always taught to roll onto the side, plus Ms. Moore is an extremely large individual, at that point it's – I felt it was best to – to keep her on her side." (28: 28-30) Officer Tu was then asked, "During the time that Ms. Moore was positioned on her stomach, did you ever see any officer holding her head and putting pressure on her head?" He replied, "Absolutely not." (28: 32-35)

When asked whether he made any efforts to monitor Ms. Moore's vital signs when she is positioned on her stomach, Officer Tu stated, "From where I was, no, but I was pretty clear Moore was still yelling and screaming, so it was pretty clear she's still breathing." (29: 3-7)

Officer Kastmiler was asked, "During the time that you were attending to Ms. Moore when she was positioned on her stomach, did you personally ever try to monitor her vital signs?" He replied, "No." When asked why not, Officer Kastmiler replied, "I was too busy controlling her hands and her legs, because she was resisting at that point." (15: 1-8) When asked if he saw any other officers trying to monitor Ms. Moore's breathing or vital signs while she was positioned on her stomach, he replied, "No." (15: 10-13)

Officer Kastmiler was asked if Ms. Moore's mouth or nose was having contact with the mattress, and he replied, "I don't believe so." He went on to state, "Based on my recollection, I don't remember seeing a face pressed against the mattress or the wall." (15: 31-39)

Officer Mathis was asked, "Did you personally apply any pressure to Ms. Moore's person above her waist while she was in a prone position?" He replied, "No. No." (13: 29-32) Officer Mathis was asked if at any time he observed any other officer apply pressure to Ms. Moore above her waistline in the back area and he replied, "No, I did not." (13: 34-38)

Officer Gardner was asked if at any time in his presence Ms. Moore made any statements she was in pain, describe any difficulty breathing, or describe any kind of medical distress. Officer Gardner replied, "No." to all three questions. (16: 18-28)

When asked if Ms. Moore was repositioned once the handcuffs and ankle restraints were put on her, the officer stated, "Yeah, at some point she was on her side." And when asked if there was any reason that she was not put into an upright, seated position, the officer stated, "Well, the whole thing – you have to imagine someone this large, it's not going to be easy to move this person around. And I think it was her bed, so it wasn't really conducive I think to be able or you know practical to pull her up into a seated position, although that would happen for a normal, normally-sized person for the Wrap, because they have to be sat, sat up at some point. But no, I don't believe we attempted to put her in a sitting position." (13: 35-46)

Sgt. Phillips was asked what position Moore was in during the struggle and she replied, "On her stomach and I think head facing the wall and, yeah completely on her stomach with handcuffs, two sets of handcuffs I recall behind her back, and I could see the hair and only – I couldn't see her whole face, so I could see a portion of her face, but that was – that was during the struggle, yeah." (3: 41-46) She was then asked, "You said that Officer Brown was near the head area?" Sgt. Phillips replied, "Yeah." (3: 48-50) She was then asked, "Was she (Officer Brown) touching her head?" Sgt. Phillips answered, "I don't know if she was touching her head or shoulder area – they were – you know – with the arms. But there was no one on top of her because I could see a fully-exposed nude body there. It was more – everyone trying to hold extremities, so there was two officers I believe up towards the head and middle, and Officer Mathis I remember particularly was by himself with the ankles, trying to restrain the ankles." (4: 1-7)

Sgt. Cardoza was asked if he saw any officer apply any pressure to Ms. Moore's head or face area and he replied, "No." He was also asked if he saw any officer apply any pressure or contact to the back of Ms. Moore's upper body and he replied, "No." (7: 16-22) Sgt. Cardoza was asked if he saw Ms. Moore's mouth or nose making contact with the mattress and he replied, "I don't know." (12: 7-9)

Allegation #5: IMPROPER ARREST, SEARCH, SEIZURE, STOP or DETENTION

--Improper Arrest (Officer Brown)

Whether Officer Brown had sufficient knowledge to effectuate a valid arrest on the warrant; or probable cause to arrest or take into custody.

DISCUSSION

Officer Brown stated that when Officer Smith arrived outside 2116 Allston Way, "He asked was the individual that we were going to contact - was his name Xavier Moore and I said "Yes," and he said, "There's a warrant for Xavier Moore out of San Francisco." And I said, "Well, this Xavier Moore just moved from San Francisco." (8: 10-23). When asked if Officer Smith described how much the warrant was for, Officer Brown replied, "I believe he said \$10,000." (8: 25-27)

Officer Brown acknowledged that after she mentioned the individual had just moved from San Francisco, Officer Smith then said "Let me go back to my car just to make sure" before he returned to his car. (8: 49-50; 9: 1-13). Officer Brown was asked if, after Officer Smith went to his car, she had any further communication with Officer Smith about the warrant outside the apartment and she replied, "Not that I recall." (9: 48-50; 10: 1-7)

Officer Brown was asked whether she remembered Officer Smith asking her any questions about the warrant after he went to his car and before she went back up to the apartment and she replied, "No." She was asked whether Officer Smith made any inquiries of her while outside the apartment about what age Xavier Moore was and she replied, "I don't recall that." She was asked if while still outside, did Officer Smith make any statements to her about whether he was concerned about whether or not it was the same Xavier Moore they were about to go contact and Officer Brown replied, "Not that I recall." Officer Brown was then asked if Officer Smith made a statement to her that he did not think that it was the same person that he mentioned having a warrant because of a difference in a date or birth or age and she replied, "No, I don't recall that." (10: 9-29). Officer Brown was asked, "So at the time that you go upstairs to make contact for the very first time, what specific information were you aware of about the existence of any warrant for a person named Xavier Moore?" She replied, "I believed that Xavier Moore had a \$10,000 warrant. And I believe that it had been confirmed." (10: 31-39)

With respect to the procedure for confirming warrants, Officer Brown stated that, "You have to have the dispatcher confirm the warrant. Basically what we see is if there's an active warrant in the system and then if we're going to have – if we're going to arrest the person on that warrant, we would have the dispatcher confirm it. If it's a local warrant, it's fairly easy; if it's out of state or a different county then they have to call that agency – and get it confirmed." (11: 7-15)

When asked, "At the time that you went upstairs to the apartment, did you have any reason to believe that the warrant for a person named Xavier Moore was for the same person you were going to be contacting?" Officer Brown replied, "I believed it was for the same person." When asked what caused her to come to that conclusion, Officer Brown further stated, "There are very few Xavier Moores, and the fact that this individual the warrant was out of San Francisco and this person had just moved from San Francisco to Berkeley." (12: 8-17)

Officer Brown was asked if she was aware of the gender of the person that the warrant was for and she stated, "Yes." "A male." (12-19-26). Officer Brown was asked if during the time that she was in contact with Xavier Moore did she obtain any kind of identifying information, to which she replied, "No." (20: 16-19). When asked whether anyone in her presence filled out a field identification card for Xavier, Officer Brown replied, "I don't know. I know I did not." (21: 36-38)

Officer Brown was asked if at some point she became aware of whether Officer Smith was doing records checks for warrants while standing outside the apartment. Officer Brown responded, "yes," and when asked what she became aware of, she stated, "He stated that Mr. Hayes had a \$5,000 warrant." Officer Brown was asked, "And did he ask you any questions about what he should do about that?" She replied, "To have it confirmed. And I told him to confirm it." (17: 19-31)

Officer Brown was asked," Was there any particular reason in your mindset that you did not ask Officer Smith to confirm the warrant on Xavier Moore?" She responded, "When he went back to his car, I believe that's what he was doing." She was then asked, "And after forming that belief did you follow up with him in any way to confirm whether that was the case or not?" Officer Brown replied, "No." (23: 41-49)

Officer Brown was asked if prior to Officer Smith leaving, had she received any kind of specific information to suggest to her that Xavier Moore did not have a warrant, and she replied, "No." (24: 23-26). Officer Brown was asked, "So at the time that Officer Smith leaves, what is your mindset with regard to whether Xavier Moore has a warrant?" She replied, "That he had confirmed the warrant." (24: 36-39)

Officer Brown was asked to describe her reasons for taking Xavier Moore into custody and she replied, "Mr. Moore could not focus. He appeared to be delusional because he told me he saw people – first he thought I was certain individuals and when I explained to him that I was not, he said that those individuals were standing behind me, which of course they were not, and his level of concentration and the fact that he kept speaking about things that were not being spoken on with regards to the FBI, and talking about dinosaurs, and so he was not making any sense." (28: 9-21). Officer Brown further stated, "Well, he was being taken into custody on the warrant and he was going to be evaluated for 5150 once in custody." (28: 23-29). Officer Brown was asked, "At what point during the contact with Xavier did you decide that you were going to take Xavier into custody for 5150?" She replied, "Well, he was being taken into custody for the warrant and he was going to be evaluated for 5150, and that was, I would say, when he started calling me various names and then said that those individuals were standing behind me. At that point I came to the conclusion that he was delusional." (29: 6-12)

Officer Brown was asked, "If we take the warrant and we set it aside, what was your mindset with regard to any potential for taking Xavier into custody for 5150?" She replied, "He would've gone in for 5150." (29: 14-17). Officer Brown was also asked, "And had you formed any, apart from the warrant, formed any observations or opinions about whether Xavier would need to be handcuffed under a 5150 basis?" She replied, "Being that I was told that he'd been doing a lot of drugs, drinking, and he was delusional, those were red flags for me, and I was concerned for his safety as well as mine." (29: 31-35)

Officer Brown stated "I told Mr. Moore he had a warrant and we needed to go down to the station to take care of it." When asked what the response was, Officer Brown stated, "He said he did not have a warrant." (29: 40-45). Officer Brown was asked, When Xavier Moore told you "No, I don't have a warrant," did you engage in any additional action to try to confirm if that was the case or not? She replied, "No." When asked, "Why not?" Officer Brown replied, "The officer who had – who did the computer check was gone and I knew he was going into custody even if it was for the 5150. I chose to tell him about the warrant, because I felt it would be easier for him to accept as opposed to telling him he was going to be 5150'd." (30: 7-17). Officer Brown was asked, "Okay, so when you arrest Xavier on a warrant and you say *We're going to go down to the station to get this cleared up*, is it – what's your mindset with regard to where Xavier is going – to the station or to the hospital?" She replied, "Initially, we were just trying to get him into cuffs. We were going to have – my – my position was I wanted to get him into cuffs and then I could call for BFD." (50: 26-31)

Officer Smith stated that prior to arriving at the call he ran a records check on the name Xavier Moore on his mobile field computer. (3: 27-33). Officer Smith was asked if he conveyed this information to anyone. Officer Smith stated that he did. When asked who he conveyed the information to, he replied, "Officer Brown and Officer Tu." When asked specifically what he told them, Officer Smith stated, "That a person with the same name had a warrant out of San Francisco for \$10,000." (12: 24-35)

Officer Smith stated that, "Officer Brown said that 'Xavier Moore used to live in San Francisco so it's probably for him." Officer Smith then asked Officer Brown "... if she knew how old they were," and Officer Brown said, "...42, around 42, something like that." (12: 42-49). Officer Smith said, "I went back to the police car and I looked at the computer and looked at the birthday that was on that warrant." He went on to say that he determined the year to be 1952. (13: 6-25)

Officer Smith was asked what he did after he determined the year of birth and he responded, "I think I went back and said, I'm not sure or I don't think that that's the right person because the age doesn't match the – the year or the date of birth – something to that effect." (13: 31-36). When asked who he conveyed that to, Officer Smith replied, "Officer Tu and Officer Brown were there." (13: 38-40). Officer Brown was asked how he recalled conveying the information and he replied, "I believe at that time that Mr. Hayes had come up, and so I kind of got out of the car and as I was walking back up I said it. So, I don't know if – I don't know if they heard it because that's when I know Hayes was there and I think there was a conversation going on there as well." (14: 9-14). When asked exactly what he said as he was walking up, Officer Smith replied, "Exactly – I don't know if I can repeat exactly but approximate what I said was I don't think that that is him because the age doesn't match the date of birth." Officer Smith was then asked, "Did you get a response from either Officer Brown or Officer Tu when you said that?" He replied, "I don't recall that." (14: 16-23). When asked, "Do you remember them, you know, reacting to you or looking at you in response?" Officer Smith replied, "I think they were – they kind of looked over at me as I talked." (14: 25-27)

Once upstairs, Officer Smith said he "spoke to one of our dispatchers on telecom and ran a records check on both Hayes and Xavier Moore." (14: 49-50). When asked if he or another officer had obtained any additional identifying information from Moore prior to running the records check, Officer Smith replied, "Yes, we – as far as I – I don't know if Officer Brown actually had an ID card or a driver's license, but she completed what we call a field card interview, which basically has information of name, date of birth, height/weight, sometimes it will – we'll get that verbally from somebody sometimes. Other times we'll ask for their ID and will copy the information down." Officer Smith received the field identification card from Officer Brown and he used information on the card to run Ms. Moore. (15: 14-25). Dispatch got back to Officer Smith and he was told that, "Mr. Hayes had a warrant for I believe vandalism out of San Francisco for the amount of \$5,000 I believe, and then told me that Xavier Moore had caution codes for assault with a deadly weapon." (16: 9-17). Officer Smith said, "I did not get any kind of a warrant hit on Xavier Moore through the records division." (16: 46)

Officer Smith stated that, "I told Officer Brown who is still engaged in conversation with Ms. Moore that Hayes had a \$5,000 warrant out of San Francisco and then I handwrote – because Ms. Moore was so agitated I didn't want to say something that would make her even more angry or become violent with us. So I handwrote on the field card *caution code 245* and handed it to Officer Brown and pointed at it." (17: 1-7). When asked if there was any reaction from Officer Brown or whether he observed her, Officer Smith replied, "I believe she looked at it – as I handed it to her and pointed, she looked." (17: 9-11). Officer Smith was asked where the FI card is and he replied, "I don't know." (17: 13-15). Officer Smith was asked if while upstairs at the apartment, ". . .other than you handing Officer Brown that field identification card with the note that you wrote on it – did you communicate anything else to her either verbally or otherwise any additional information about the existence or non-existence of a warrant for

Moore?" Officer Smith replied, "I did not." (19: 9-20)

When asked about Ms. Moore's demeanor during her interaction with Officer Brown, Officer Smith stated, "She was very – at first very calm and then immediately began acting extremely erratic. She kept saying things that just were not on topic that didn't sound – oh it just wasn't a typical conversation with someone." (9: 39-44)

Officer Tu was asked if at any time when he was outside of the apartment, when he first got there, if he heard any conversation between Officer Smith and Officer Brown, and he stated, "Well, briefly, before Mr. Hayes approached and we're still trying to find Mr. Hayes, the three of us were standing there. I remember Officer Smith saying he was checking the names of the subjects involved in the call, and he found a warrant out of San Francisco; I don't remember what for, but it was for the same name as the roommate Mr. Hayes was describing, with the same physical descriptors. The difference was there was a difference in the birthday, but everything else seemed to match, and Officer Brown said she was familiar or knew that Mr. Moore frequented San Francisco or perhaps lived in San Francisco at one point." (7: 16-31)

Officer Tu was asked if he heard officers make any statements about going to get more information or to check any more information about the date of birth and he replied, "I don't recall." (7: 39-42)

Officer Tu was asked, "So as the three of you are still there at the door with Ms. Moore, were any people identified at that time?" Officer Tu replied, "I believe just Moore and Hayes." (13: 23-26). Officer Tu was asked if he could describe what happened and he stated, "I know they were ID'd. I don't know if it was verbally or by physical ID—" (13: 45-48)

Officer Tu stated, "- I know the information was passed to Officer Smith who began records check." (14: 5-6). When asked what he meant by passed, Officer Tu stated, "Usually when we identify people we write that information down on a card." When asked who was the person who obtained the identification, Officer Tu replied, "I don't know." (14: 8-14). Officer Tu was asked who he saw passing something to Officer Smith and he replied, "Officer Brown." (14: 16-18)

Officer Tu was asked if he saw Officer Smith hand a field identification card back to Officer Brown and he replied, "I don't remember." (17: 8-10)

Officer Tu was asked if he reported in his report that Moore made paranoid rambling statements and he replied, "Yes." When asked if he recalled what he meant by that, he stated, "At this time I can't remem - I mean it's how many months later – I don't remember specific words. I just remember some things that Moore was saying just weren't making any sense." (10: 43-50; 11: 1-3)

Officer Tu was asked if at some point Officer Brown made a reference to a warrant for Ms. Moore and he replied, "Yes." Officer Tu stated, "I don't recall the exact verbage, but I remember Officer Brown told Ms. Moore that there was a warrant." When asked if Officer Brown tell Ms. Moore what was going to happen because of that, Officer Tu replied, "Yeah, and – and Officer Brown told Ms. Moore that she had the warrant and she was going to come with us tonight for the night." (18: 1-9). When asked how Ms. Moore reacted, Officer Tu stated, "Not well. Ms. Moore became extremely upset – was just denying, saying, "No, no, no," just getting angry, saying, "That's not true. It's not true," starting to elevate – elevate the voice a little bit – a lot - getting physically agitated, you know, kind of starting to waive the arms around a little bit." (18: 11-15)

Officer Tu was asked if there was any communication between he and Officer Brown about what to do next and Officer Tu stated, "Yeah, there was some non-verbal contact when it became clear that Ms. Moore was not accepting the information about the warrant — and did not appear to want to willingly come with us, she motioned for me to try and detain Moore." Officer Tu later described, "I reached in and I – I believe I took hold of the left arm at that time and tried to place her in a rear wrist lock." (20: 28-31). Officer Tu described in part that Ms. Moore " – pretty violently tried to jerk away – and run back into the apartment." (21: 27-38). Officer Tu stated he was pulled into the apartment, at which time Ms. Moore broke free of his grasp and fell onto a mattress. (22: 12-19). He went on to describe that Ms. Moore was "kicking hard and making contact with my body." When asked which parts of his body, Officer Tu replied, "My legs, my hands." (22: 23-37)

Sgt. Phillips was asked, "At some point after the Berkeley Fire arrived, did you have occasion to inquire of Officer Brown, you know, after the fact, why it was that Ms. Moore had been taken into custody?" Sgt. Phillips replied, "Yeah, as soon as they – as soon as the Fire Department got there and took over I asked Officer Brown – I believe I asked her if Ms. Moore was under arrest or what – what did we have or something like that and she said he had a \$10,000 warrant." (14: 7-12)

OTHER INFORMATION

- PRC staff interviewed Captain Harris in regards to the Crisis Intervention Team (CIT) and related policy (see interview statement). According to Harris, the policy was written on 1/24/2013, the CIT went into operation on 1/20/2013, and the policy was circulated to BPD staff 1/30/2013 with a follow up email on 1/31/2013. Harris stated that, based on the rosters that she reviewed, none of the assigned CIT members were on duty at the time of this incident (see PRC statement).
- PRC staff's request for BPD's Use of Force Report was denied because the department considers
 this report a non-public record. Additionally, BPD was also unable to provide redacted audio and
 video recordings of Mr. Hayes' BPD interview, or the audio recording of Officer Smith's warrant
 check, due to staffing limitations.
- PRC staff was unable to make contact with either Mr. Hayes or Mr. Sterling.
- The Alameda County Coroner's Office would not release autopsy photos to PRC absent a court order.

END OF REPORT

ATTACHMENT #3

BPD Police Report

Detail Call for Service Report Transcript of Mr. Hayes' 911 call



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS:

CFS Number:

211

From Date:

02/12/2013 00:00

CFS Type:

ΑII

To CFS: Layer: All 211

To Date: Areas:

02/12/2013 23:59 All

Agency Type:

Police, Fire, EMS

2013-00008510

Location:

211

Call Date/Time:

02/12/2013 23:49:41

Dispatch Time:

Primary Incident:

02/12/2013 23:54:32

Additnl Loc Info:

ALLSTON WAY

3ERKELEY, CA 94710, Berkeley

Common Name: GAIA APT BUILDING

Arrive Time:

02/12/2013 23:57:43

Clear Date/Time:

Created By:

02/13/2013 14:08:06 Boatman, Clevon G.

Phone: Call Type:

415

Nature Of Call:

Canceled:

Sex

Status:

IN PROGRESS

Report Required: Priority:

No 2

Source:

911 Call

Police ORI:

CA0010300

EMS ORI:

Fire ORI:

01015

Person Information

Name

Person

Address

Phone

Race

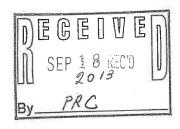
DOB

Age

SSN

Type

HAYES, JOHN REPORTIN **PARTY**



Information redacted is protected from public disclosure by California Government Code 6254 (f), (k).



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS:

211 211 From Date:

02/12/2013 00:00

CFS Type:

All

Layer: All

To Date: Areas: 02/12/2013 23:59 All Agency Type:

Police, Fire, EMS

CFS Number: 21

211 Call Date/Time:

02/12/2013 23:49:41

Primary Incident: 2013-00008510

Narrative, Questionnaire Responses, TDD Text

Create Time	Created By	Narrative
02/12/2013 23:49:41	Boatman, Clevon G.	E911 Info - Class of Service: W911 Special Response Info: QUERY CALLER FOLLOCATION
02/12/2013 23:51:24	Boatman, Clevon G.	RESP: EJAVIER MOORE, LSW/ SARONG TPE WRAP INSIDE THE BLDG
02/12/2013 23:52:10	Boatman, Clevon G.	NO KNOWN WEAPONS APT DOES HAVE KITCHEN KNIVES
02/12/2013 23:52:35	Boatman, Clevon G.	AND DRINKING ALCOHOL
02/12/2013 23:52:45	Boatman, Clevon G.	RP WILL BE IFO THE BLDG
02/12/2013 23:53:02	Boatman, Clevon G.	RESP IS THE RP'SOOMATE
02/12/2013 23:53:11	Boatman, Clevon G.	Nature Of Call: ROOMATES
02/12/2013 23:53:42	Boatman, Clevon G.	CORR:XAVIER MOORE,BM, SARONG TYPE CLOTHING
02/12/2013 23:54:30	Boatman, Clevon G.	PER RP MAY NEED TO BE
02/12/2013 23:54:33	Smith, Brandon C.	Dispatch received by unit 4A5
02/12/2013 23:54:48	Boatman, Clevon G.	Nature Of Call: & 647F ALCOHOL
02/12/2013 23:55:04	Boatman, Clevon G.	PE MEDICAL & 10-42
02/12/2013 23:57:25	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 00:29:38	Mathis, Brian	Dispatch received by unit 3A6
02/13/2013 00:29:39	Kastmiler, Nikos	Dispatch received by unit 4A7
02/13/2013 00:30:07	Gardner, Timothy	Dispatch received by unit 3A16
02/13/2013 00:30:11	Ross, Sean	Dispatch received by unit S25
02/13/2013 00:30:41	McClain, Tyrone J.	SEND MORE COVER
02/13/2013 00:33:03	Phillips, Amber	Dispatch received by unit S17
02/13/2013 00:33:11	Cardoza, Benjamin	Dispatch received by unit S31
02/13/2013 00:34:17	Kaplan, Timothy D.	Dispatch received by unit 3A2
02/13/2013 00:34:53	McClain, Tyrone J.	BFD FOR GRNY
02/13/2013 00:41:19	McClain, Tyrone J.	SUBJ NOT BREATHING STARTING CPR
02/13/2013 00:42:16	McClain, Tyrone J.	BFD ADVISED
02/13/2013 00:54:35	Jamison, Catherine	Dispatch received by unit ID1
02/13/2013 00:57:48	McIntosh, Elgin	Dispatch received by unit 4A9
02/13/2013 00:58:29	McClain, Tyrone J.	1019 1015 W/ONE FOR A4
02/13/2013 01:19:59	Sherman, Lavertta	c t3 on chnl-2 for rings a2 a4 a6 a14 and s31 remain on scene all others 1010
02/13/2013 01:21:13	Frankel, Andrew J.	Dispatch received by unit 3A14
02/13/2013 01:26:55	Gardner, Timothy	Dispatch received by unit 3A16
02/13/2013 01:53:39	Brown, Gwendolyn	Dispatch received by unit 3A4 Information redacted is protected
02/13/2013 01:59:40	Smith, Brandon C.	Dispatch received by unit 4A5 from public disclosure by
02/13/2013 02:02:12	Tu, Kenneth	Dispatch received by unit 4A3 California Government Code
02/13/2013 02:04:43	Phillips, Amber	Dispatch received by unit S17
02/13/2013 02:10:00	McClain, Tyrone J.	BFD CLEAR
02/13/2013 02:25:12	Mathis, Brian	Dispatch received by unit 3A6
02/13/2013 02:31:14	Kastmiler, Nikos	Dispatch received by unit 4A7
Page: 2 of 13		

Page: 2 of 13



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS:

211

From Date:

02/12/2013 00:00

CFS Type:

To CFS: Layer: All 211

To Date:

Areas:

02/12/2013 23:59

Agency Type:

Police, Fire, EMS

CFS Number:

211

Αll

Call Date/Time: 02/12/2013 23:49:41 Primary Incident: 2013-00008510

Narrative, Questionnaire Responses, TDD Text

Create Time	Created By	Narrative
02/13/2013 03:17:37	Mathis, Brian	Dispatch received by unit 3A6
02/13/2013 03:22:57	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 03:29:55	Mathis, Brian	Dispatch received by unit 3A6
02/13/2013 03:32:35	Brown, Gwendolyn	Dispatch received by unit 3A4
02/13/2013 03:36:50	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 03:43:36	Smith, Brandon C.	Dispatch received by unit 4A5
02/13/2013 04:38:57	Phillips, Amber	Dispatch received by unit S17
02/13/2013 05:02:59	Tu, Kenneth	Dispatch received by unit 4A3
02/13/2013 07:38:38	Brown, Gwendolyn	Dispatch received by unit 3A4

Dispositions

zz do not use A

Disposition

Disposition Count

zz do not use Assist

2 2

Associated Areas

Area Type Code Description

Quadrant

041

Station

Sta 2 4E

District

Beat

Police ORI

CA0010300

EMS ORI Fire ORI

2013-00008510

01015

Incident Number(s)

Incident Number

ORI Number

Primary Unit

Department Name

Agency Type

Police

CA0010300 Yes

Berkeley Police Department

Information redacted is protected from public disclosure by California Government Code 6254 (f), (k).



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS:

211

From Date:

02/12/2013 00:00

CFS Type:

Αll

To CFS: Layer: All

211

To Date: Areas:

02/12/2013 23:59 Ali

Agency Type:

Police, Fire, EMS

CFS Number:

211

Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Unit(s)					
Unit	Primary Unit	Radio Number	Personnel		
4A9	No	4A09	06715 McIntosh		
4A7	No	4A07	09678 Kastmiler		
4A5	No	4A05	07154 Smith		
4A3	No	4A03	09123 Tu		
3A16	No	3A16	02450 Gardner		
3A14	No	3A14	05902 Frankel		
3A6	No	3A06	05457 Mathis		
3A4	Yes	3A04	01241 Brown		
3A2	No	3A02	03136 Kaplan		
\$25	No	S25	00870 Ross		
S17	No	\$17	08180 Phillips		
D1	No	ID1	07056 Jamison		
331	No	S31	05386 Cardoza		

information redacted is protected from public disclosure by California Government Code 6254 (f), (k).



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

Layer: All

211 211

From Date: To Date:

02/12/2013 00:00

CFS Type:

02/12/2013 23:59

Areas:

Agency Type:

Police, Fire, EMS

ΑII

CFS Number: 211 Call Date/Time: 02/12/2013 23:49:41 Primary Incident: 2013-00008510

Call Log		1 1	
Log Date/Time	Entered By	Action	Description
02/12/2013 23:49:41	Boatman, Clevon G	. Çall Created	New call created. Call Type: NEW, Location: 2 3 SHATTUCK, Phone Number: Ime: METRO PCS 1
02/12/2013 23:49:41	Boatman, Clevon G	. Narrative Added	E911 Info - Class of Service: W911 Special Response Info: QUERY CALLER FOR LOCATION
02/12/2013 23:49:41	Boatman, Clevon G.	Person Added	Name: METRO PCS
02/12/2013 23:49:56	Boatman, Clevon G.	Location	Location ; ALLSTON WAY, Venue: Berkeley
02/12/2013 23:50:04	Boatman, Clevon G.	Location	Location: ALLSTON WAY, Qualifier. Venue: Berkeley
02/12/2013 23:50:13	Boatman, Clevon G.	Call Type	NewCallType: 415, Status: In Progress, Priority: 2
02/12/2013 23:51:24	Boatman, Clevon G.	Narrative Added	RESP: EJAVIER MOORE,P LSW/ SARONG TPE WRAP INSIDE THE BLDG
02/12/2013 23:51:39	Boatman, Clevon G.	Person Updated	Name: HAYES JOHN Location: 2 (, Contact Pho
02/12/2013 23:52:10	Boatman, Clevon G.	Narrative Added	NO KNOWN WEAPONS APT DOES HAVE KITCHEN KNIVES
02/12/2013 23:52:35	Boatman, Clevon G.	Narrative Added	AND DRINKING ALCOHOL
02/12/2013 23:52:45	Boatman, Clevon G.	Narrative Added	RP WILL BE IFO THE BLDG
02/12/2013 23:53:02	Boatman, Clevon G.	Narrative Added	RESP IS THE RP'SOOMATE
02/12/2013 23:53:11	Boatman, Clevon G.	Call Updated	Nature of Call: ROOMATES
02/12/2013 23:53:11	Boatman, Clevon G.	Narrative Added	Nature Of Call: ROOMATES
02/12/2013 23:53:11	Boatman, Clevon G.	Call Ready for Dispatch	
02/12/2013 23:53:42	Boatman, Clevon G.	Narrative Added	CORR:XAVIER MOORE ,SARONG TYPE CLOTHING
02/12/2013 23:54:30	Boatman, Clevon G.	Narrative Added	PER RP MAY NEED TO BE
02/12/2013 23:54:32	McClain, Tyrone J.	Incident Created	Added Incident Number, ORI: CA0010300, Number: 2013-00008510
02/12/2013 23:54:32	McClain, Tyrone J.	Unit Status Action	, Unit 3A4 Dispatched
02/12/2013 23:54:32	McClain, Tyrone J.	Unit Status Action	Unit 4A5 Dispatched
02/12/2013 23:54:33	Smith, Brandon C.	Narrative Added	Dispatch received by unit 4A5
02/12/2013 23:54:34	McClain, Tyrone J.	Unit Status Action	Unit 3A4 Enroute
02/12/2013 23:54:34	McClain, Tyrone J.	Unit Status Action	Unit 4A5 Enroute
02/12/2013 23:54:48	Boatman, Clevon G.	Call Updated	Nature of Call: & 647F ALCOHOL
02/12/2013 23:54:48	Boatman, Clevon G.	Narrative Added	Nature Of Call: \$ 647F ALCOHOL
02/12/2013 23:54:49	Boatman, Clevon G.	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident
02/12/2013 23:55:04	Boatman, Clevon G.	Narrative Added	PE MEDICAL & 10-42
02/12/2013 23:56:05	Boatman, Clevon G.	Person Updated	Name: HAYES, JOHN Location: Venue: Berkeley, Contact Phone
02/12/2013 23:57:24	McClain, Tyrone J.	Unit Status Action	Unit 4A3 Dispatched Information redacted is protected
02/12/2013 23:57:25	Tu, Kenneth	Narrative Added	Dispatch received by unit 4A3110111 DUDIIC disclosure by
02/12/2013 23:57:27	McClain, Tyrone J.	Unit Status Action	Unit 4A3 Enroute California Government Code
02/12/2013 23:57:43	McClain, Tyrone J.	Unit Status Action	Unit 3A4 On Scene 6254 (f), (k).
02/12/2013 23:58:15	McClain, Tyrone J.	Unit Status Action	Unit 4A3 On Scene
02/12/2013 23:58:18	McClain, Tyrone J.	Unit Status Action	Unit 4A5 On Scene

Page: 5 of 13



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211 211

From Date: To Date:

02/12/2013 00:00

02/12/2013 23:59

CFS Type:

ΑII

Layer: All

Areas:

Agency Type:

Police, Fire, EMS

CFS Number:

211

Αll Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Call Log

Log Date/Time	Entered By	Action	Description
02/13/2013 00:29:37	McClain, Tyrone J.	Unit Status Action	Unit 3A6 Dispatched
02/13/2013 00:29:38	McClain, Tyrone J.	Unit Status Action	Unit 4A7 Dispatched
02/13/2013 00:29:38	Mathis, Brian	Narrative Added	Dispatch received by unit 3A6
02/13/2013 00:29:39	Kastmiler, Nikos	Narrative Added	Dispatch received by unit 4A7
02/13/2013 00:29:43	McClain, Tyrone J.	Unit Status Action	Unit 3A6 Enroute
02/13/2013 00:30:06	McClain, Tyrone J.	Unit Status Action	Unit 3A16 Dispatched
02/13/2013 00:30:07	Gardner, Timothy	Narrative Added	Dispatch received by unit 3A16
02/13/2013 00:30:07	McClain, Tyrone J.	Unit Status Action	Unit 3A16 Enroute
02/13/2013 00:30:10	McClain, Tyrone J.	Unit Status Action	Unit S25 Dispatched
02/13/2013 00:30:11	Ross, Sean	Narrative Added	Dispatch received by unit S25
02/13/2013 00:30:12	McClain, Tyrone J.	Unit Status Action	Unit S25 Enroute
02/13/2013 00:30:15	McClain, Tyrone J.	Unit Status Action	Unit 4A7 Enroute
2/13/2013 00:30:41	McClain, Tyrone J.	Narrative Added	SEND MORE COVER
2/13/2013 00:33:01	McClain, Tyrone J.	Unit Status Action	Unit S17 Dispatched
2/13/2013 00:33:03	Phillips, Amber	Narrative Added	Dispatch received by unit S17
2/13/2013 00:33:10	McClain, Tyrone J.	Unit Status Action	Unit S31 Dispatched
2/13/2013 00:33:11	Cardoza, Benjamin	Narrative Added	Dispatch received by unit S31
2/13/2013 00:33:21	McClain, Tyrone J.	Unit Status Action	Unit S31 On Scene
2/13/2013 00:33:24	McClain, Tyrone J.	Unit Status Action	Unit S17 On Scene
2/13/2013 00:33:27	McClain, Tyrone J.	Unit Status Action	Unit S25 On Scene
2/13/2013 00:33:50	McClain, Tyrone J.	Unit Status Action	Unit 3A6 On Scene
2/13/2013 00:33:58	McClain, Tyrone J.	Unit Status Action	3A6
2/13/2013 00:34:16	McClain, Tyrone J.	Unit Status Action	Unit 3A2 Dispatched
2/13/2013 00:34:17	Kaplan, Timothy D.	Narrative Added	Dispatch received by unit 3A2
/13/2013 00:34:25	McClain, Tyrone J.	Unit Status Action	Unit 3A2 On Scene
2/13/2013 00:34:53	McClain, Tyrone J.	Narrative Added	BFD FOR GRNY
2/13/2013 00:36:11	McClain, Tyrone J.	Unit Status Action	Unit 3A16 On Scene
/13/2013 00:36:14	McClain, Tyrone J.	Unit Status Action	Unit 4A7 On Scene
/13/2013 00:41:19	McClain, Tyrone J.	Narrative Added	SUBJ NOT BREATHING STARTING CPR
2/13/2013 00:42:16	McClain, Tyrone J.	Narrative Added	BFD ADVISED
/13/2013 00:54:34	McClain, Tyrone J.	Unit Status Action	Unit ID1 Dispatched Information redacted is protected
2/13/2013 00:54:35	Jamison, Catherine	Narrative Added	Dispatch received by unit ID1 ITOM DUDIC disclosure by
/13/2013 00:54:52	McClain, Tyrone J.	Unit Status Action	Unit ID1 Enroute Colfornia Governmeni Code
/13/2013 00:57:45	McClain, Tyrone J.	Unit Status Action	Unit 4A9 Dispatched 6254 (f), (k).
//13/2013 00:57:48	McIntosh, Elgin	Narrative Added	Dispatch received by unit 4A9
:/13/2013 00:57:48	McClain, Tyrone J.	Unit Status Action	Unit 4A9 Enroute
2/13/2013 00:58:29	McClain, Tyrone J.	Narrative Added	1019 1015 W/ONE FOR A4

Page: 6 of 13



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211 211

From Date: To Date:

02/12/2013 00:00

All

02/12/2013 23:59

CFS Type: Agency Type:

Layer: All **CFS Number:** 211

Areas: Call Date/Time: 02/12/2013 23:49:41

Police, Fire, EMS

Primary Incident: 2013-00008510

Call Log

Call Log			
Log Date/Time	Entered By	Action	Description
02/13/2013 00:58:34	McClain, Tyrone J.	Unit Status Action	1019 1015 W/ONE
02/13/2013 01:06:51		Unit Timer Expired	Unit ID1;Enroute
02/13/2013 01:07:19	McClain, Tyrone J.	Unit Status Action	ENRT TO ABH
02/13/2013 01:09:47		Unit Timer Expired	Unit 4A9;Enroute
02/13/2013 01:11:00	McClain, Tyrone J.	Unit Status Action	1019 JAIL
02/13/2013 01:12:48	McClain, Tyrone J.	Unit Status Action	Unit 4A9 On Scene
02/13/2013 01:19:59	Sherman, Lavertta	Narrative Added	c t3 on chnl-2 for rings a2 a4 a6 a14 and s31 remain on scene all others 1910
02/13/2013 01:20:43	Johnson, Rayna	Unit Status Action	1019
02/13/2013 01:20:48	Johnson, Rayna	Unit Status Action	1019 WRITING
02/13/2013 01:21:12	Johnson, Rayna	Unit Status Action	Unit 3A14 Dispatched
02/13/2013 01:21:13	Johnson, Rayna	Unit Status Action	Unit 3A14 On Scene
02/13/2013 01:21:13	Frankel, Andrew J.	Narrative Added	Dispatch received by unit 3A14
02/13/2013 01:22:08	McClain, Tyrone J.	Unit Status Action	Unit ID1 On Scene
)2/13/2013 01:26:55	Gardner, Timothy	Narrative Added	Dispatch received by unit 3A16
)2/13/2013 01:31:05	McClain, Tyrone J.	Unit Status Action	ABH
)2/13/2013 01:33:26	Kaplan, Timothy D.	Call Updated	Dispositions Changed
)2/13/2013 01:33:26	Kaplan, Timothy D.	Unit Status Action	Unit 3A2 cleared from call
)2/13/2013 01:33:47	McClain, Tyrone J.	Unit Status Action	ABH
)2/13/2013 01:36:37	McClain, Tyrone J.	Unit Status Action	1019 WRITING
12/13/2013 01:49:23	McClain, Tyrone J.	Unit Status Action	1019 WRITING
2/13/2013 01:49:29	McClain, Tyrone J.	Unit Status Action	1019 WRITING
2/13/2013 01:53:39	Brown, Gwendolyn	Narrative Added	Dispatch received by unit 3A4
2/13/2013 01:59:15	McClain, Tyrone J.	Unit Status Action	Unit 3A14 cleared from call
2/13/2013 01:59:40	Smith, Brandon C.	Narrative Added	Dispatch received by unit 4A5
2/13/2013 02:02:12	Tu, Kenneth	Narrative Added	Dispatch received by unit 4A3
2/13/2013 02:04:43	Phillips, Amber	Naπative Added	Dispatch received by unit S17
2/13/2013 02:08:09	McClain, Tyrone J.	Unit Status Action	Unit 4A9 rerouted to call 230
2/13/2013 02:10:00	McClain, Tyrone J.	Narrative Added	BFD CLEAR
2/13/2013 02:25:12	Mathis, Brian	Narrative Added	Dispatch received by unit 3A6
2/13/2013 02:28:18	Parker, Steven R.	Unit Status Action	Unit ID1 cleared from call
2/13/2013 02:31:14	Kastmiler, Nikos	Narrative Added	Dispatch received by unit 4A7
2/13/2013 03:17:37	Mathis, Brian	Narrative Added	Dispatch received by unit 3A6 Information redacted is protected from public disclosure by
2/13/2013 03:22:57	Tu, Kenneth	Narrative Added	California Government Code
2/13/2013 03:29:55	Mathis, Brian	Narrative Added	Dispatch received by unit 3A6 6254 (f), (k).
2/13/2013 03:32:35	Brown, Gwendolyn	Narrative Added	Dispatch received by unit 3A4
2/13/2013 03:36:50	Tu, Kenneth	Narrative Added	Dispatch received by unit 4A3

age: 7 of 13

2/13/2013 03:43:36

Smith, Brandon C.

Narrative Added

Dispatch received by unit 4A5



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211 211 From Date:

02/12/2013 00:00

CFS Type:

Layer: All

To Date: Areas:

02/12/2013 23:59

Agency Type:

Police, Fire, EMS

CFS Number:

211

Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Call Log

Call Log				
Log Date/Time	Entered By	Action	Description	
02/13/2013 03:49:52	Kastmiler, Nikos	Call Updated	Dispositions Changed	
02/13/2013 03:49:52	Kastmiler, Nikos	Unit Status Action	Unit 4A7 cleared from call	
02/13/2013 03:50:42	Smith, Brandon C.	Call Updated	Dispositions Changed	
02/13/2013 03:50:42	Smith, Brandon C.	Unit Status Action	Unit 4A5 cleared from call	
02/13/2013 04:11:41	McClain, Tyrone J.	Unit Status Action	Unit S31 cleared from call	
02/13/2013 04:11:48	McClain, Tyrone J.	Unit Status Action	Unit S17 cleared from call	
02/13/2013 04:38:57	Phillips, Amber	Unit Status Action	Unit S17 Dispatched	
02/13/2013 04:38:57	Phillips, Amber	Narrative Added	Dispatch received by unit S17	
02/13/2013 04:41:57		Unit Timer Expired	Unit S17;Dispatched	
02/13/2013 04:45:39	Parker, Steven R.	Unit Status Action	Unit 3A16 cleared from call	
02/13/2013 04:45:48	Parker, Steven R.	Unit Status Action	Unit 3A6 cleared from call	
02/13/2013 04:46:01	Parker, Steven R.	Unit Status Action	Unit S25 cleared from call	
02/13/2013 05:02:59	Tu, Kenneth	Narrative Added	Dispatch received by unit 4A3	
02/13/2013 05:03:16	Tu, Kenneth	Call Updated	Dispositions Changed	
02/13/2013 05:03:16	Tu, Kenneth	Unit Status Action	Unit 4A3 cleared from call	
02/13/2013 05:04:00	McClain, Тугопе J.	Unit Status Action	Unit S17 On Scene	
02/13/2013 07:38:38	Brown, Gwendolyn	Narrative Added	Dispatch received by unit 3A4	
02/13/2013 10:01:29	Larks, Rena	Unit Status Action	Unit 3A4 cleared from call	
02/13/2013 10:01:41	Larks, Rena	Unit Status Action	Unit S17 cleared from call	
02/13/2013 14:08:05	Krocil, Lucie	Call Updated	Dispositions Changed	
02/13/2013 14:08:06	Krocil, Lucie	Call Cleared	*	
03/04/2013 16:14:22	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/04/2013 16:19:47	Tan, Eduardo J.	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/05/2013 10:35:45	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/05/2013 14:16:42	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/11/2013 12:03:54	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/11/2013 12:05:28	Smith, Katherine	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/26/2013 21:06:52	Sherman, Lavertta	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	
03/26/2013 21:07:50	Sherman, Lavertta	Alerts Accessed	Clicked Alert Icon: Location ALERT: Prior Incident	

from public disclosure by California Government Code 6254 (f), (k).



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS:

211

From Date:

02/12/2013 00:00

Call Date/Time: 02/12/2013 23:49:41

CFS Type:

ΑII

Primary Incident: 2013-00008510

Layer: All

age: 9 of 13

To CFS:

211

To Date: Areas:

02/12/2013 23:59

Agency Type:

Police, Fire, EMS

CFS Number:

211

All

Unit Log						
Log Date/Time	Entered By	Unit	Status	Action	Description	Location
02/12/2013 23:54:32	McClain, Tyrone J.	4A5	Dispatched	Unit Status Change		ALLSTON WAY
02/12/2013 23:54:32	McClain, Tyrone J.	3A4	Dispatched	Unit Status Change		ALLSTON WAY
02/12/2013 23:54:34	McClain, Tyrone J.	3A4	Enroute	Unit Status Change		Berkerey
02/12/2013 23:54:34	McClain, Tyrone J.	4A5	Enroute	Unit Status Change		
02/12/2013 23:57:24	McClain, Tyrone J.	4A3	Dispatched	Unit Status Change		GAIA APT BUILDING,
						ALLS FON WAY Berkeley
02/12/2013 23:57:27	McClain, Tyrone J.	4A3	Enroute	Unit Status Change		
02/12/2013 23:57:43	McClain, Tyrone J.	3A4	On Scene	Unit Status Change		
02/12/2013 23:58:15	McClain, Tyrone J.	4A3	On Scene	Unit Status Change		
02/12/2013 23:58:18	McClain, Tyrone J.	4A5	On Scene	Unit Status Change		
02/13/2013 00:29:37	McClain, Tyrone J.	3A6	Dispatched	Unit Status Change		GAIA APT BUILDING,
¥-						ALLSTON WAY t Berkeley
02/13/2013 00:29:38	McClain, Tyrone J.	4A7	Dispatched	Unit Status Change		GAIA APT RI III DING,
						ALLSTON WAY Berkeley
02/13/2013 00:29:43	McClain, Tyrone J.	3A6	Enroute	Unit Status Change		
02/13/2013 00:30:06	McClain, Tyrone J.	3A16	Dispatched	Unit Status Change	Information redacted is prof	ALLSTON WAY
)2/13/2013 00:30:07	McClain, Tyrone J.	3A16	Enroute	Unit Status Change	from public disclosure b California Government Co 6254 (f), (k).	V
)2/13/2013 00:30:10	McClain, Tyrone J.	S25	Dispatched	Unit Status Change	, vzu4 (i), (k).	ALLSTON WAY
)2/13/2013 00:30:12	McClain, Tyrone J.	S25	Enroute	Unit Status Change		Berkeley
Jages 0 of 12				J. 131 130		



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211

From Date:

02/12/2013 00:00

CFS Type:

Layer: All

211

To Date: Areas:

02/12/2013 23:59

Agency Type:

Police, Fire, EMS

CFS Number:

211

Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
02/13/2013 00:30:15	McClain, Tyrone J.	4A7	Enroute	Unit Status Change	3	Location
02/13/2013 00:33:01	McClain, Tyrone J.	S17	Dispatched	Unit Status Change		GAIA APT BUILDING,
						ALLSTON WAY Berkeley
02/13/2013 00:33:10	McClain, Tyrone J.	S31	Dispatched	Unit Status Change		GAIA APT BUILDING
						ALLSTON WAY Berkeley
02/13/2013 00:33:21	McClain, Tyrone J.	S31	On Scene	Unit Status Change		_
02/13/2013 00:33:24	McClain, Tyrone J.	S17	On Scene	Unit Status Change		
02/13/2013 00:33:27	McClain, Tyrone J.	S25	On Scene	Unit Status Change		
02/13/2013 00:33:50	McClain, Tyrone J.	3A6	On Scene	Unit Status Change		
2/13/2013 00:33:58	McClain, Tyrone J.	3A6	On Scene	Unit Location	3A6	3A6
2/13/2013 00:34:16	McClain, Tyrone J.	3A2	Dispatched	Unit Status Change		GAIA APT BUILDING,
						ALLSTON WAY Berkeley
2/13/2013 00:34:25	McClain, Tyrone J.	3A2	On Scene	Unit Status Change		
2/13/2013 00:36:11	McClain, Tyrone J.	3A16	On Scene	Unit Status Change		
2/13/2013 00:36:14	McClain, Tyrone J.	4A7	On Scene	Unit Status Change		
2/13/2013 00:54:34	McClain, Tyrone J.	ID1	Dispatched	Unit Status Change		GAIA APT BUILDING.
						ALLSTON WA\ Berkeley
2/13/2013 00:54:52	McClain, Tyrone J.	ID1	Enroute	Change	ormation redacted is prote from public disclosure b	ected
2/13/2013 00:57:45	McClain, Tyrone J.	4A9	Dispatched	Unit Status Change	California Government Co 6254 (f), (k).	්ලිAIA APT BUILDING.
						ALLSTON WAY 2, Berkeley
2/13/2013 00:57:48	McClain, Tyrone J.	4A9	Enroute	Unit Status Change		Deliveleà

Page: 10 of 13



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211 211 From Date: To Date:

02/12/2013 00:00 02/12/2013 23:59

CFS Type:

ΑII

Layer: All

Areas:

Αll

Agency Type:

Police, Fire, EMS

Call Date/Time: 02/12/2013 23:49:41 CFS Number: 211 Primary Incident: 2013-00008510

Unit Log						
Log Date/Time	Entered By	Unit	Status	Action	Description	Location
02/13/2013 00:58:34			On Scene	Unit Location	1019 1015 W/ONE	1019 1015 W/ONE
02/13/2013 01:06:51	default_nws	ID1	Enroute	Unit Timer Expire	d	GAIA APT BUILDING,
						ALLSTON WAY Berkeley
02/13/2013 01:07:19	McClain, Tyrone J.	4A3	On Scene	Unit Location	ENRT TO ABH	ENRT TO ABH
02/13/2013 01:09:47	default_nws	4A9	Enroute	Unit Timer Expire	d	GAIA APT BUILDING,
						ALLSTON WAY Berkeley
02/13/2013 01:11:00	McClain, Tyrone J.	4A5	On Scene	Unit Location	1019 JAIL	1019 JAIL
02/13/2013 01:12:48	McClain, Tyrone J.	4A9	On Scene	Unit Status Change		
02/13/2013 01:20:43	Johnson, Rayna	3A16	On Scene	Unit Location	1019	1019
02/13/2013 01:20:48	Johnson, Rayna	3A16	On Scene	Unit Location	1019 WRITING	1019 WRITING
02/13/2013 01:20:58	Johnson, Rayna	ID1	Enroute	Timer Override	Override time = 999	GAIA APT BUILDING,
:						ALLSTON WAY Berkeiey
02/13/2013 01:21:12	Johnson, Rayna	3A14	Dispatched	Unit Status Change		ALLSTON WAY
02/13/2013 01:21:13	Johnson, Rayna	3A14	On Scene	Unit Status Change	intormation redacted from public disc California Governi	OSUITE DV
02/13/2013 01:22:08	McClain, Tyrone J.	ID1	On Scene	Unit Status Change	6254 (f), (neni Code k).
02/13/2013 01:31:05	McClain, Tyrone J.	3A14	On Scene	Unit Location	ABH	ABH
02/13/2013 01:33:26	Kaplan, Timothy D.	3A2	On Scene	Disposition Added	Alcohol Present	1019 1015 W/ONE
2/13/2013 01:33:26	Kaplan, Timothy D.	3A2	Available	Unit Cleared	Unit cleared from call	
2/13/2013 01:33:26	Kaplan, Timothy D.	3A2	Available	Unit Status Change		
2/13/2013 01:33:47	McClain, Tyrone J.	S31	On Scene	Unit Location	ABH	ABH
2/13/2013 01:36:37	McClain, Tyrone J.	4A3	On Scene	Unit Location	1019 WRITING	1019 WRITING
2/13/2013 01:49:23	McClain, Tyrone J.	S31	On Scene	Unit Location	1019 WRITING	1019 WRITING
2/13/2013 01:49:29	McClain, Tyrone J.	3A14	On Scene	Unit Location	1019 WRITING	1019 WRITING
dd -5 4 D						

age: 11 of 13



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211

From Date:

02/12/2013 00:00

CFS Type:

Layer: All

211

To Date: Areas:

02/12/2013 23:59

Agency Type:

Police, Fire, EMS

WRITING

CFS Number:

211

Call Date/Time: 02/12/2013 23:49:41

OI 3 Number.	211 Ca	all Date/Ti	me: 02/12/2013	23:49:41	Primary Incident: 2013-000	08510
Unit Log						
Log Date/Time	Entered By	Unit	Status	Action	Description	1 0
02/13/2013 01:59:1	The contract of the contract o	J. 3A14	Available	Unit Cleared	Unit cleared from call	Location
02/13/2013 01:59:1		J. 3A14	Available	Unit Status Change	C.M. Oldalda Hoff Call	
02/13/2013 02:08:0	, . ,	J. 4A9	Available	Unit Cleared	Unit cleared from call	
02/13/2013 02:28:1	8 Parker, Steven R.	ID1	Available	Unit Cleared	Unit cleared from call	
02/13/2013 02:28:1	8 Parker, Steven R.	ID1	Available	Unit Status Change	onit olgared from call	
02/13/2013 03:49:5;	· · · · · · · · · · · · · · · · · · ·	4A7	Available	Unit Status Change		
02/13/2013 03:49:52	2 Kastmiler, Nikos	4A7	Available	Unit Cleared	Unit cleared from call	
02/13/2013 03:49:52	2 Kastmiler, Nikos	4A7	On Scene	Disposition Adde		GAIA APT BUILDING
12/12/2014 2 02:50:40	0.111.5					ALLSTON WAY Berkeley
2/13/2013 03:50:42	ormen prandon o.	4A5	Available	Unit Cleared	Unit cleared from call	- Simoloy
2/13/2013 03:50:42		4A5	On Scene	Disposition Added	Officer Assisted	1019 JAJL
2/13/2013 03:50:42		4A5	Available	Unit Status Change		10 10 UAIL
2/13/2013 04:11:41	McClain, Tyrone J.	S31	Available	Unit Cleared	Unit cleared from call	
2/13/2013 04:11:41	McClain, Tyrone J.	S31	Available	Unit Status Change		
2/13/2013 04:11:48	McClain, Tyrone J.	S17	Available	Unit Cleared	Unit cleared from call	
2/13/2013 04:11:48	McClain, Tyrone J.	S17	Available	Unit Status Change		
!/13/2013 04:38:57	Phillips, Amber	S17	Dispatched	Unit Status Change		ALLSTON WAY
/13/2013 04:41:57	default_nws	S17	Dispatched	Unit Timer Expired	Information redacted in from public disclos California Governme 6254 (f), (k).	Berkeley S protected SUFAL DATON
/13/2013 04:45:39	Parker, Steven R.	3A16	Available	Unit Status Change	0.00 (1), (10).	berkeley
13/2013 04:45:39	Parker, Steven R.	3A16	Available	Unit Cleared	Unit cleared from call	
13/2013 04:45:48	Parker, Steven R.	3A6	Available	Unit Status Change		
13/2013 04:45:48	Parker, Steven R.	3A6	Available	Unit Cleared	Unit cleared from call	
13/2013 04:46:01	Parker, Steven R.	S25	Available	Unit Status Change		
13/2013 04:46:01	Parker, Steven R.	S25	Available		Unit cleared from call	
13/2013 05:03:16	Tu, Kenneth	4A3	On Scene		Alcohol Present	1019 WPITING

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02/13/2013 05:03:16

Tu, Kenneth

4A3

Available

Unit Cleared

Unit cleared from call



Login ID: kreeve

Print Date/Time: 09/05/2013 13:07

From CFS: To CFS:

211

From Date:

02/12/2013 00:00

CFS Type:

Αll

Layer: All

211

To Date: Areas:

02/12/2013 23:59 Αll

Agency Type:

Police, Fire, EMS

CFS Number:

211

Call Date/Time: 02/12/2013 23:49:41

Primary Incident: 2013-00008510

Unit Log

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
02/13/2013 05:03:16	Tu, Kenneth	4A3	Available	Unit Status Change		
02/13/2013 05:04:00	McClain, Tyrone J.	S17	On Scene	Unit Status Change	9	
02/13/2013 10:01:29	Larks, Rena	3A4	Available	Unit Cleared	Unit cleared from call	
02/13/2013 10:01:29	Larks, Rena	3A4	Available	Unit Status Change		
02/13/2013 10:01:41	Larks, Rena	S17	Available	Unit Cleared	Unit cleared from call	
02/13/2013 10:01:41	Larks, Rena	S17	Available	Unit Status Change		

Information redacted is projected from public disclosure by California Government Code 6254 (f), (k).

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PRC COMPLAINT #2327

TRANSCRIPTION OF BPD DISPATCH Call Date/Time 2/12/13; 23:49:41

Dispatch:

Berkeley 911 Emergency.

Caller:

Yes, I would like a police (inaudible) – 2116 Allston Way.

Dispatch:

What's happening at 2116 Allston?

Caller:

Okay, my roommate is acting a fool; he needs to go to the psych ward, somebody

needs to check him in. My name is on the lease, okay.

Dispatch:

Okay, one second, 2115 or 16?

Caller:

2115.

Dispatch:

16.

Caller:

The Gaia Building.

Dispatch:

Which apartment number?

Caller:

514. I'll be standing out front.

Dispatch:

Okay, before you get off the phone I need to get some more information from

you.

Caller:

Okav.

Dispatch:

Okay, your roommate you said needs to be 5150'd?

Caller:

Yes.

Dispatch:

Does he take medication?

Caller:

Well, he should be taking medication but he's (inaudible) - he hasn't taken it or

hasn't been taking it for a long time - .

Dispatch:

Okay.

Caller:

- but he still knows —he still knows what he's doing and (inaudible).

Dispatch:

What - what is his name, sir?

Caller:

Xavier Moore.

Dispatch:

And what race is he?

Caller:

He's black.

Dispatch:

About how old?

Caller:

40, about 43 years old.

Dispatch:

Do you know what he's wearing tonight – what color jacket?

Caller:

He's not wearing a jacket. He's wearing a shirt around him like a skirt with a

(inaudible) like a top (inaudible) hair.

Dispatch:

Okay, so a colorful shirt and something in his head?

Caller:

No, something wrapped around him like a skirt.

Dispatch:

Okay. And he's still inside?

Caller:

Yeah, he's still inside. He pushed out for no reason – he put me out. I want my

\$100 rent money I paid -

Dispatch:

Okay. And what is your name?

Caller:

John Hayes.

Dispatch:

Okay, Mr. Hayes, give me your first name again?

Caller:

John – J- O- H- N.

Dispatch:

Okay, does he have any weapons that you know of?

Caller:

Yes, a kitchen knife with him (inaudible) but he didn't have it in his hand when I was last at the house but he just held it (inaudible). I seen him do that before in the past, take up a kitchen knife like he was going to use it but he's not carrying a

weapon at this time. (Inaudible)

Dispatch:

Okay. And you said that you think that he should be on medication but he's not

taking.

Caller:

Yeah, he is on medication but he hasn't taken if for so long.

Dispatch:

Okay, do you know what his diagnosis is, is he paranoid schizophrenic - whether

he –

Caller:

One is schizoaffective and the other two they don't have names for but he still

knows what he's doing – and he's also been drinking alcohol.

Dispatch:

Okay, are you going to meet us in front?

Caller:

Yeah, I'll be out front.

Dispatch:

Okay, we'll get an officer there.

Caller:

Thank you.

Dispatch:

Okay – bye.

Caller:

Bye.

ATTACHMENT #4

BPD Photos

Photos 1 through 9 are of the interior of Unit #514 at 2116 Allston Way, and were shot by BPD Crime Scene Technician Catherine Jamison on 2/13/13. These photos were taken between 1:24 a.m. and 1:41 a.m.

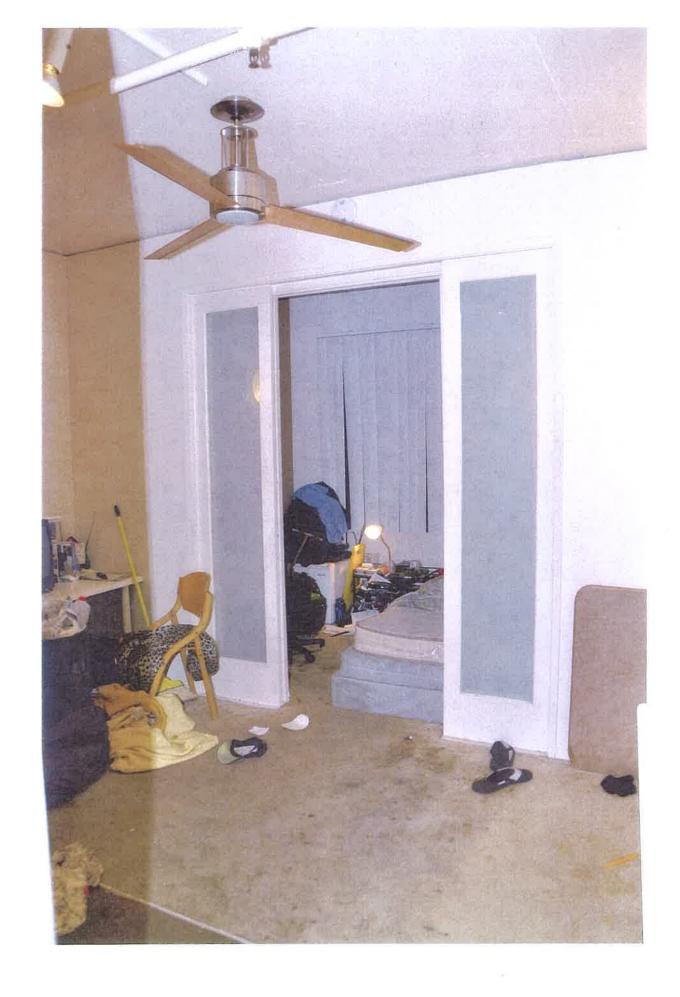
Photos 10 through 16 are of the interior of Unit #514 at 2116 Allston Way, and were shot by BPD Crime Scene Technician Cuahtemoc Vargas on 2/13/13. These photos were taken between 2:26 p.m. and 3:12 p.m.

These photos were selected to enable Commissioners to see the apartment where the incident occurred.

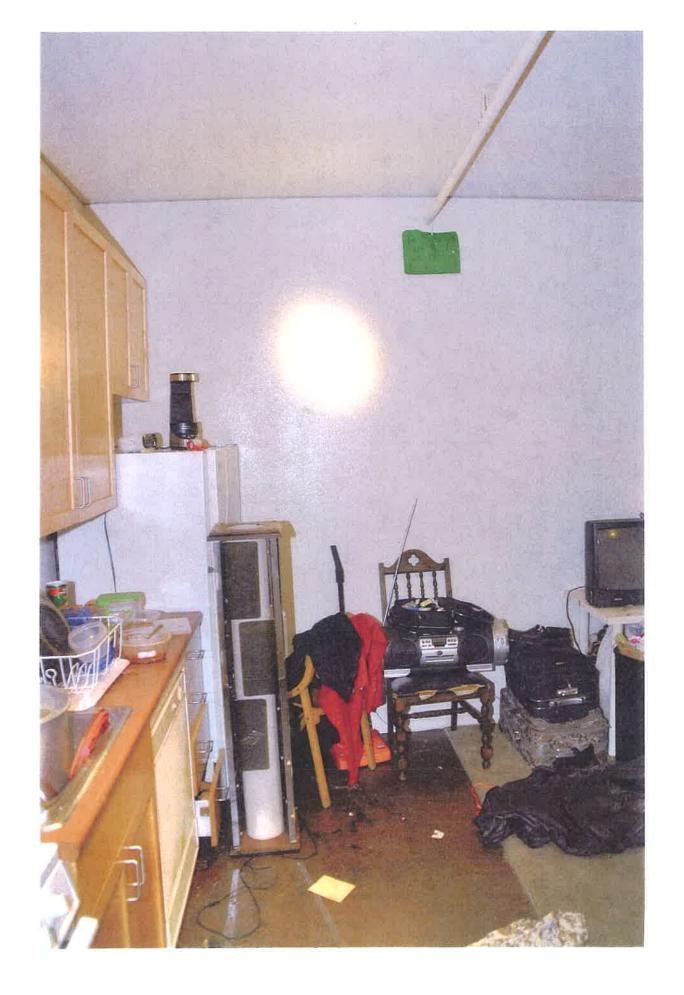


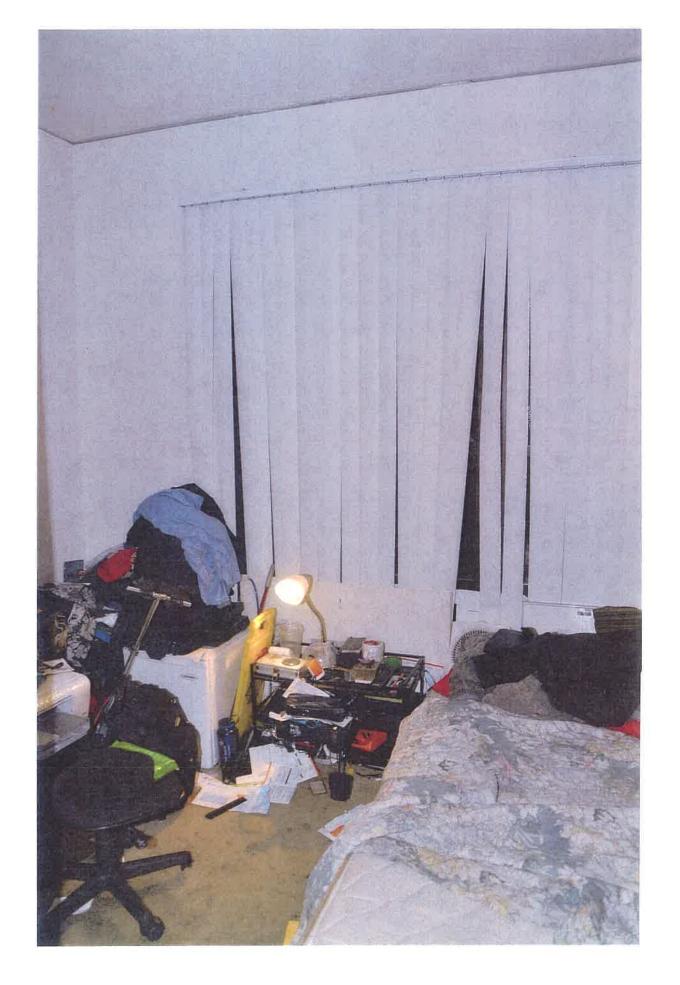




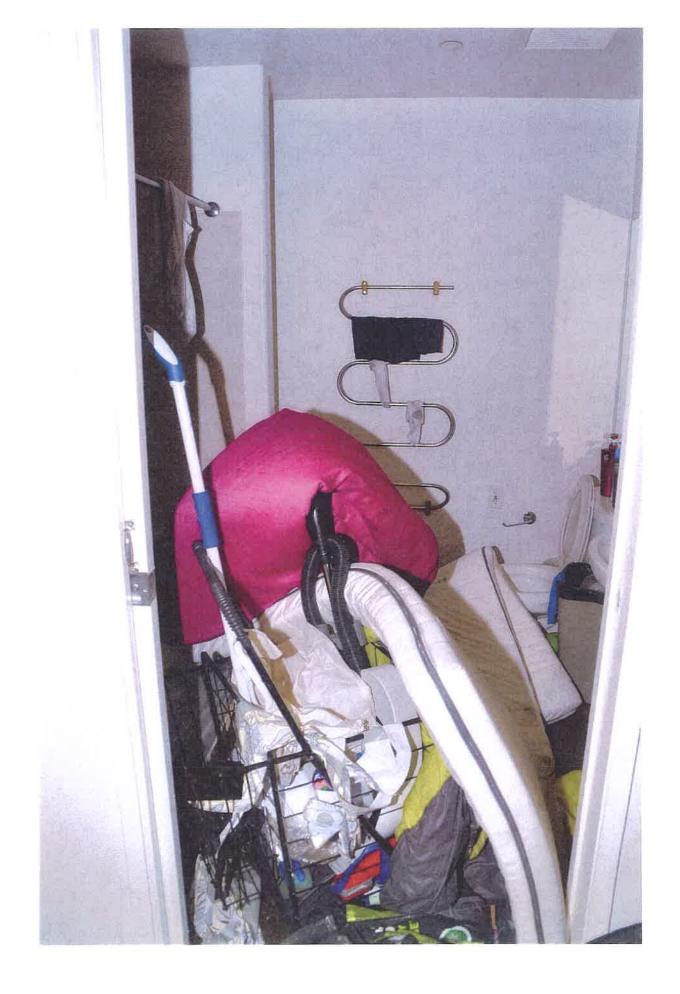


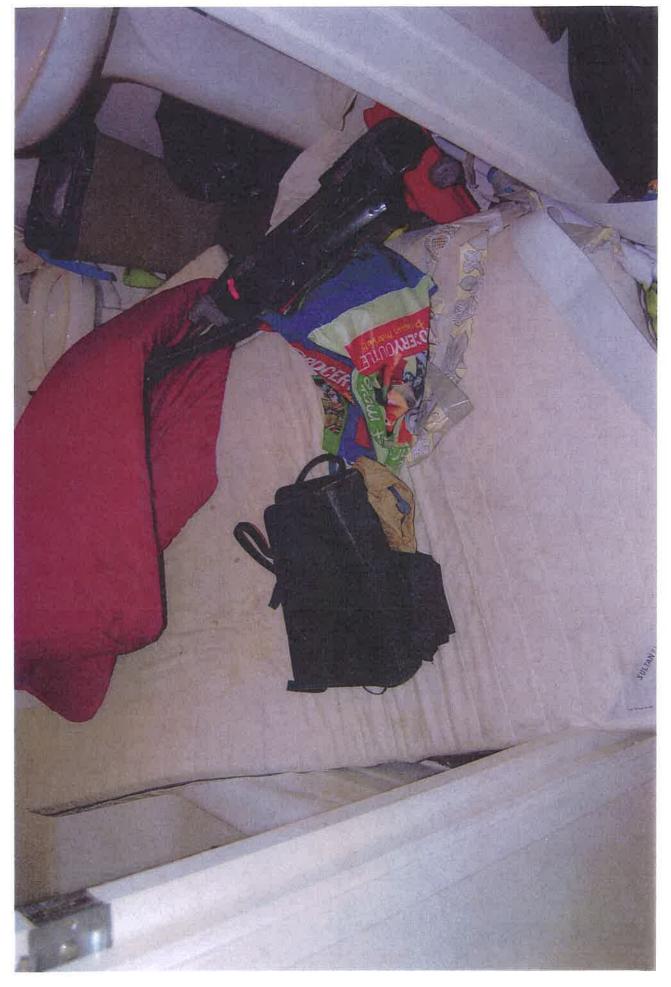




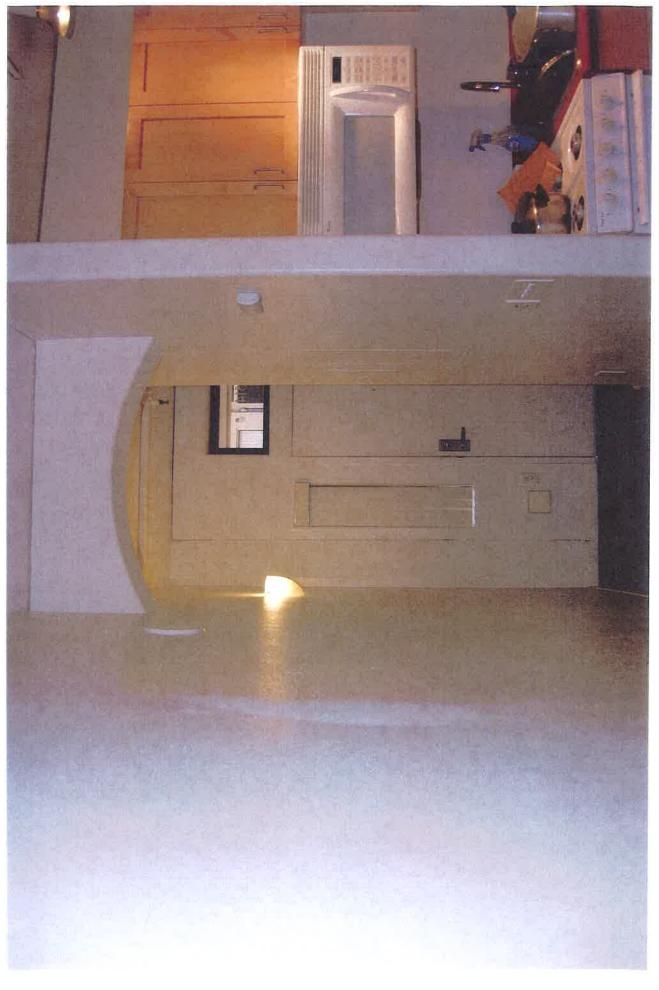


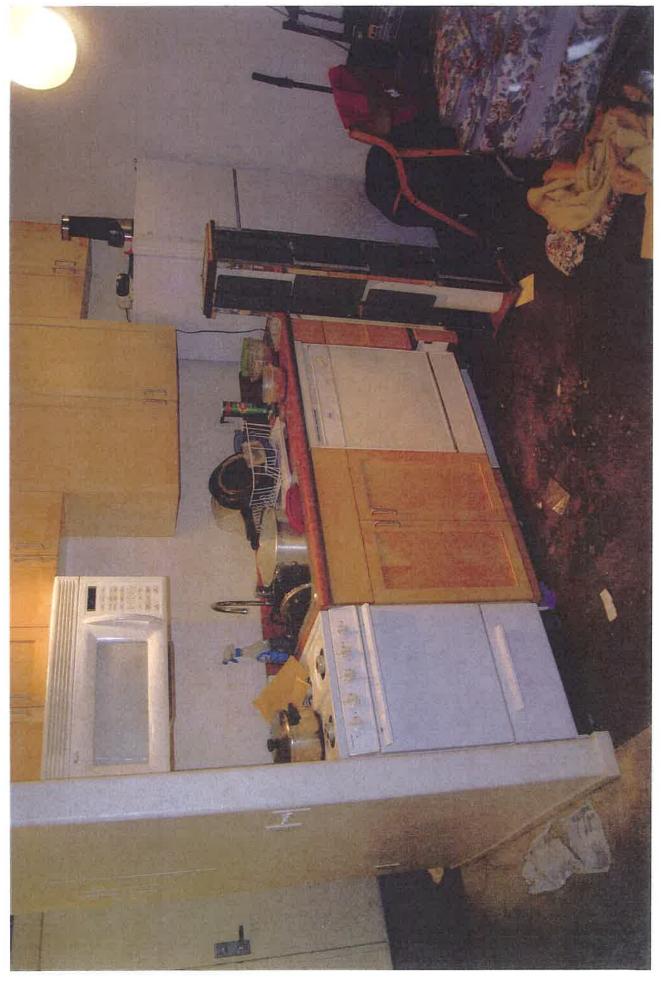


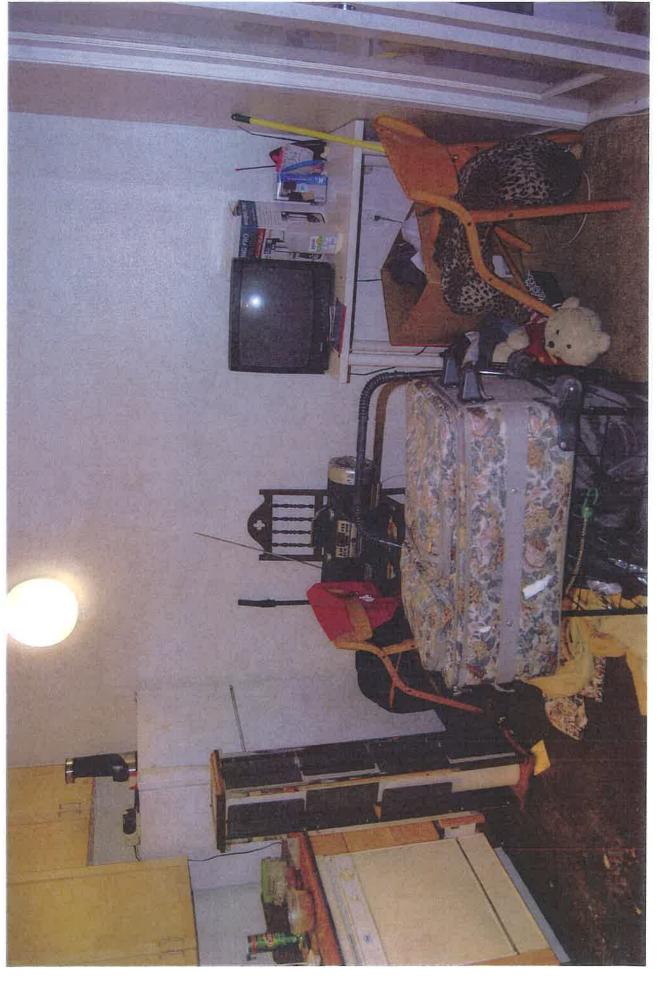


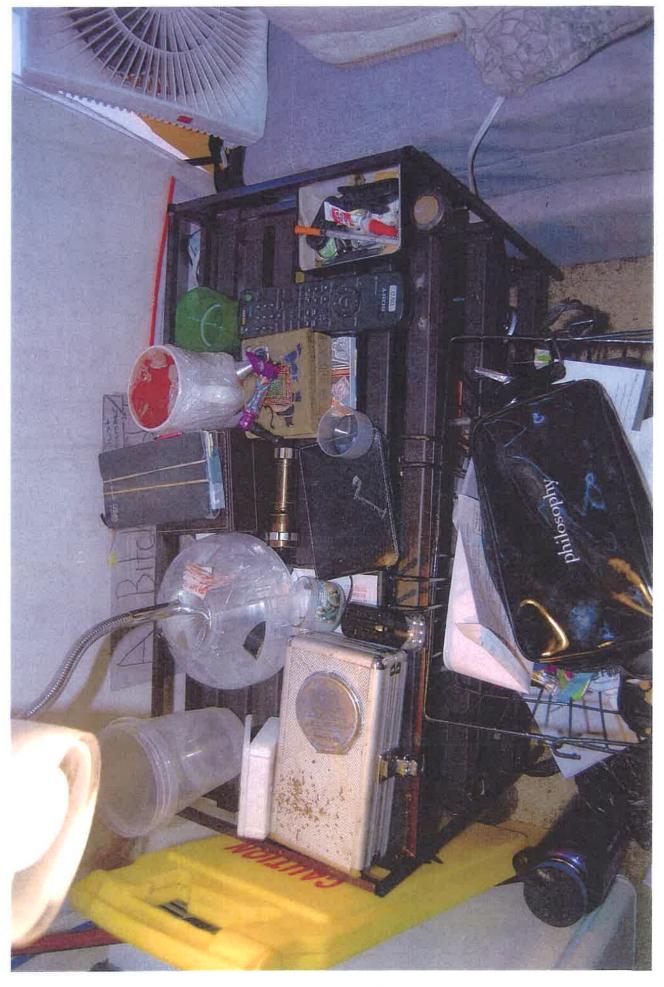










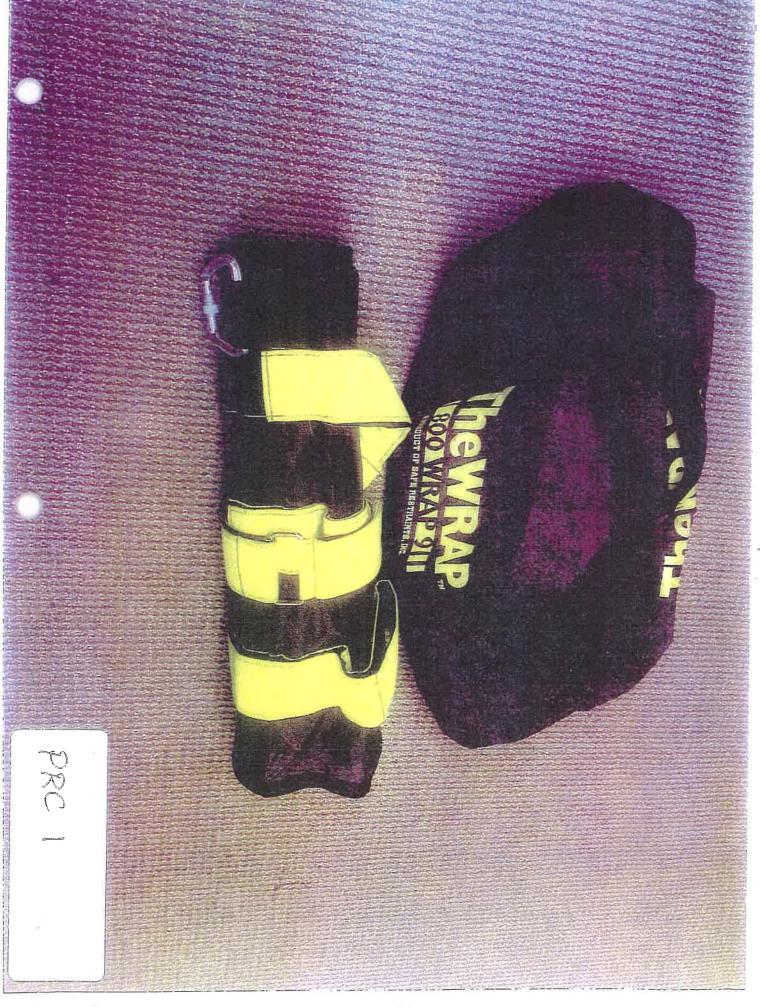




ATTACHMENT #5

PRC Photos

Photos 1 through 5 are of the Wrap Restraint and were taken by PRC staff. They are referred to in subject officers' statements.









PRC 4



ATTACHMENT #6

San Francisco County Records

S.F. Police Department Incident Report #100547712 S.F. Superior Court Misdemeanor Complaint #2453494 S.F. Superior Court Minutes Report Type: Initial

San Francisco Police Department

	- 1		***********						PUR	1			100		
人	1	cident Number 00-547-712	Оссителсе f 6/13/10	rom Date/Tim 20:05	e Occ	ипепсе t	o Date/1	ime	6/13	ted Date/Tim /10 20:0		CAD Number 101642924		-	-
C	Type of Incident Battery -04134											005			
D	1.5	eation of Occurrence 88 California St						ntersection lotel	with/Pren	nise type	-	,	Distric		5
E	Co	nfidential Arrest port? Made		pect	Suspect Unknown?		Non-Sus Incident	spect	Domestic Violence		f Weapon	1 Used)	Report 3A111	ing Unit	
T		cation Sent											Distric		7
	_	88 California St 4											CENT		N
	Hora	w Cleared? Repo	orted to Bureau	ı Nam	e W	St	tar	Date/	Time	Elder Victim	Gang Relate			udice ed?	10
O F	DE	I declare under p	belief follow	ing an inves	tigation d	of the ev	ents ar	id parties	correct involve	d.	ny pers	onal knowledç	je, or is b	ased on	
F	C	PROP 115 CERT	IFIED 5	YEAR/POST		Signa	ature:	juice		//		Date			
1	Ā.	Disperso Demonice A					Central Station				Watch 1600-0200		2:24:39		
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R	T	OSgt. Thomas Haymond #365 AR				Station Watch Central Station					3	Date JUN 1 3 2010			
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San Francisco Police Department ADDITIONAL REPORTEE

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Incident# 100547712

San Francisco Police Department PROPERTY LISTINGS

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San Francisco Police Department NARRATIVE

On 6/13/2010, Officer Gallagher #1422 and I responded to 1388 California Street regarding a

battery committed by a 300 lb transgendered person. The suspect identified as Xavier Moore met us at the door of the hotel and said she had an altercation with a tenant on the fourth floor but did not want any police action. Xavier Moore presented herself as the 911 caller and the victim but matched the description of the suspect. At this point, Officer Gallagher and I were unclear who originally called 911. Officer Duffield responded to the scene to assist while we investigated who was the original caller. We determined the original caller was and we responded to room 402 to meet with him. Officer Gallagher and I met with along with his wife. I observed a cut with a bump on the right side of forehead and a cut to his left forearm area. I asked f he needed an ambulance and he said no. I asked him if he lost consciousness and he said no. told me the following: Moore has been a problem in a building and always comes to his and s rooms and bothers them. On this occasion, Moore came to room to ask for a lighter and was refused. went to make sure Moore left the hallway and when he turned his back on Moore she hit him in the head. did not know if Moore used any type of weapon. said after Moore hit him in the head he swung at her with his came but missed. Officer Gallagher and spoke with Moore and she told us that she made some fried chicken and went started to swear at Moore and to bring it to the head with his cane. Moore told us there was no bump on her head, no swelling, no pain and no blood. Officer Gallagher and I did not view any visible injury. We asked Moore if she hit she said she "swatted him." Then Moore started talking about voodoo curses and witchcraft. Based on the physical evidence I observed, along with the considerable size difference between and Moore, Officer Gallagher and I determined Moore was the primary aggressor. is extremely thin and frail with numerous medical problems; including a bad back that would make it difficult for him to fight. Moore is extremely large and did not appear to have any obvious physical ailments. a citizen's arrest and he agreed to it. I accepted the citizen's arrest. I took photos I offered injuries and a photo of Moore. I issued Moore a citation for battery with the approval of Sgt. Haymond. Officer Gallagher and I advised Moore not to engage of approach else he would be booked. I booked all evidence at Central Station and forwarded a copy of the report to the misdameanor DA intake.

KAMALA D. HARRIS, SB#146672 District Attorney San Francisco District Attorney's Office 850 Bryant Street, 3rd Floor San Francisco, CA 94103 Telephone: (415) 553-1752

ATTORNEYS FOR THE PEOPLE

San Francisco County Superior Court

JUL 2 7 2010

CLERK OF THE COURT

By: Deputy Clerk

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA CITY AND COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff.

٧.

XAVIER CHRISTOPHER MOORE Defendant(s).

MISDEMEANOR COMPLAINT

CASE NUMBER:

2453494

The Undersigned, being sworn says, on information and belief, that:

COUNT: 1

The said defendant, XAVIER CHRISTOPHER MOORE, did in the City and County of San Francisco, State of California, on or about the 13th day of June, 2010, commit the crime of BATTERY, to wit: Violating Section 242 of the Penal Code, a Misdemeanor, in that the said defendant did willfully and unlawfully use force and violence upon the person of

THE BELOW EXHIBIT(S) ARE INCORPORATED BY REFERENCE HERETO AS IF SET FORTH IN FULL HEREIN, AND PROVIDE PROBABLE CAUSE TO BELIEVE THAT THE SAID DEFENDANT(S) COMMITTED SAID OFFENSE(S).

SFPD REPORT NO. 100547712
CHRONOLOGICAL REPORT(S) OF INVESTIGATION
CITIZEN'S ARREST CARD
VICTIM AND WITNESS STATEMENT(S)
LAB REPORT
OTHER: ANY AND ALL EXHIBITS EVIDENCE PHOT

OTHER: ANY AND ALL EXHIBITS, EVIDENCE, PHOTOCOPIES OF EVIDENCE AND NOTES, TAPES ATTACHED HERETO REPORT(S) OR REFERENCED IN REPORTS OR CHRONOLOGICAL REPORT OF INVESTIGATION.

Pursuant to Penal Code sections 1054 through 1054.7, the People request that, within fifteen (15) days, the defendant and/or his/her attorney disclose: (A) the names and addresses of persons, other than the defendant, he/she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements, of those persons including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, to offer in evidence at the trial. This request is a continuing request, to cover not only all such material currently in existence, but all material which comes into existence to the conclusion of this case.

I state, declare, verify and certify under the penalty of perjury that the foregoing is true and correct. Executed in San Francisco, California on July 22, 2010.

har

OFFICER DAVID NAKASU

Page 2 of 2

People of the State of	Present				
SC # 000000	Assistant DA of F	Record	Present	Attorney of Record	Present
Interpreter Language	Clerk	GINA M. GUIDI	- 0.3/2.IVI	Judge RONALD E ALBERS	
Reporter BELDON YEE #2	2647-850 Bryan	nt Street, Room	201-San Fran	cisco-94103-4603	

Special appearance by LINDSEY CHOW, DA for the Assistant DA of Record.

Count Code Section 001 PC 242/M

Degree MC #

Plea Finding

PC 242/M 02453494

Cause on calendar: ARRAIGNMENT.

No appearance by defendant:

The Court orders that a bench warrant issue.

Bail is set at \$10000.

This is the 1ST bench warrant issued in this case.

1 OF 1 BENCH WARRANTS ISSUED THIS DATE

FD:(03/23/2002) G

Print Date: 07/27/2010 12:18

Line#602

Dept M14 Date 07/27/2010 Page 1 of 1

Attest: GINA M. GUIDI

Deputy Clerk

Generic Minutes

ATTACHMENT #7

Subject Officers' Statements

Transcript of Officer Brown's Interview	Page 105
Transcript of Officer Tu's Interview	Page 161
Transcript of Officer Smith's Interview	Page 191
Transcript of Officer Gardner's Interview	Page 221
Transcript of Officer Mathis' Interview	Page 239
Transcript of Officer Kastmiler's Interview	Page 257

STATEMENT OF OFFICER BROWN PRC COMPLAINT #2327

LS: Lucinda Simpson, PRC Officer BN: Byron Norris, PRC Investigator GB: Officer Brown, Subject Officer

HS: Harry Stern, Legal Rep.

LS: Good afternoon, my name is Lucinda Simpson. I'm the Berkeley Police Review Commission Officer. Today's date is September 18, 2013. The time is 4:03 p.m. I'm here with Officer Gwendolyn Brown, and is your badge #16?

GB: Yes.

LS: And also present is PRC Investigator Byron Norris and also is Officer Brown's counsel Mr. Harry Stern. Officer Brown is subject officer on complaint #2327. Officer Brown you are here under the provisions and protection of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive Fifth Amendment rights pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Brown and Mr. Rains – sorry – Mr. Stern, are you aware that this interview is being recorded?

Rep: I am.

GB: Yes.

LS: And Officer Brown will you answer the questions today truthfully and to best of your ability.

GB: Yes.

LS: Very good. If I can ask how long have you been a sworn police officer?

GB: Twenty-two years for Berkeley.

LS: And any prior experience before that?

GB: Richmond PD.

LS: For how long?

GB: Almost two years.

LS: Okay. If I can ask (inaudible) put a little closer to you. And can you describe over your police career some of the different assignments that you held over your career?

Case #2327 Officer Brown

Transcribed by MGM 10-11-13 Reviewed by BN 10.22.13

- GB: I was the first female motor officer for the City of Berkeley. I worked the Warrant Division, a member of the Crowd Management Team; I made defensive-tactics instructor; I designed and implemented the first calibration program for our fleet department for the City; I was very instrumental in getting long term insurance care for officers that sustained injuries off duty.
- LS: Okay. And you mentioned you've been a defense tactics instructor, how long have you been instructing on the topic?
- GB: Probably about three-four years.
- LS: Okay, and what's involved in that what do you do in that regard?
- GB: We teach the officers and non-sworn like the jailers how to restrain a person you do control holds, take downs, how to do proper cuffing, things of that nature.
- LS: Okay, and how many officers or civilians would you estimate you've trained in that defense tactics?
- GB: The entire police department –
- LS: Okay.
- GB: and the jailers. It's done yearly training.
- LS: And what experience or specific training do you have that you bring in terms of you qualifying as an instructor on that topic?
- GB: I've attended their defensive tactics and instructor school.
- LS: And how long is that program?
- GB: I believe it was two weeks.
- LS: And when did you attend that?
- GB: Three or four years ago.
- LS: Okay. All right, I want to address your attention briefly to something called the Crisis Intervention Team, are you familiar with that?
- GB: Yes.
- LS: Okay. And what exactly is that?
- GB: It's officers who intervene when there's some type of crisis where they're trying to mitigate the situation, bring it to a peaceful ending.
- LS: Are you familiar with general order C66 Crisis Intervention Team?

- GB: I'm familiar with it.
- LS: Okay, if I can show you the General Order does that refresh your memory at all? (Paper shuffling) Okay, having had a chance to look at C66 are you familiar with this general order?
- GB: Yes.
- LS: It looks like the date issued is January 24 of this year, is that right?
- GB: Correct.
- LS: Do you remember the first time you heard about this general order?
- GB: I believe it was after this incident.
- LS: And how did you hear about it was it a briefing or how did you learn about it?
- GB: It was on the complaint.
- LS: And was that the first time that you were aware of the existence of the general order?
- GB: Yes.
- LS: Subsequent to learning about it on the complaint, did you receive any additional briefing or information about its existence?
- GB: Afterwards?
- LS: Yes.
- GB: Yes, they they have, um, spoke about it.
- LS: Can you remember sort of approximately when that was after you learned about the complaint?
- GB: It may have been when they were doing a debriefing for the officers after this incident.
- LS: Do you mean after the incident in February?
- GB: Yes.
- LS: Okay. And where did that take place?
- GB: Down at the Fire Department I believe on 9th and Cedar.
- LS: And what did you learn about when you were briefed on this, what did you learn about it?

- GB: Basically that they were going to be training the officers and they would have officers on every team that would have that training.
- LS: And as of February 12 of this year, 2013, were you aware of General Order C66 on that particular date, February 12, 2013?
- GB: No.
- LS: Okay. And at that time were you personally trained as a CIT officer?
- GB: No.
- LS: What team were you working on that date?
- GB: It was Team 3.
- LS: Okay, and did you know of any other officers on team 3 that were CIT trained officers as of February 12, 2013?
- GB: No.
- LS: You were not aware of them or there were none?
- GB: I was not aware of them.
- LS: Okay. And were you given any kind of instruction by your department once you were briefed on this general order what, you know, what you are supposed to do, how you are supposed to utilize it or follow it?
- GB: I don't recall that.
- LS: Okay. Can you tell me what was discussed in that briefing?
- GB: Basically how we felt about the situation, what had happened.
- LS: And are we talking about the incident on February 12th?
- GB: Yes.
- LS: Okay, so I think what I need to ask is, was there a specific briefing directed at, you know, training or information about this particular bulletin C66?
- GB: I don't recall it.
- LS: Okay.
- BN: Do you know when the Crisis Intervention Team came into existence?
- GB: No.

- BN: Do you know if it was in existence on February 12, 2013?
- GB: I would not have known that.
- BN: Did you receive any general training on crisis intervention, you know, response, what have you?
- GB: With regards to this -
- BN: With regards to just just crisis intervention and how officers respond to those type of crises?
- GB: I don't recall any specific training.
- BN: Okay.
- LS: All right. So if I can direct your attention to February 12, 2013, just before midnight, did you have occasion to receive a call through Dispatch?
- GB: Yes.
- LS: And can you describe the call as you heard it, what your understanding of the circumstances were?
- GB: It was a call of a 415 between roommates. The reporting party was to meet me in front of the apartment building. On the MDT screen it said that the roommate had been kicked out of the apartment by his roommate who was schizophrenic and possibly needed to be 5150'd and off his medication.
- LS: And you mentioned the word MDT, can you –
- GB: That's the -.
- LS: describe the whole word?
- GB: That's the mobile device in our patrol cars; it's basically a computer –
- LS: Okav.
- GB: a laptop.
- LS: All right. Did you have occasion to go to 2116 Allston Way?
- GB: Yes.
- LS: And when you arrived there, did you come into contact with another officer, Officer Tu?
- GB: Officer Tu and I arrived pretty much at the same time.
- LS: And did you have occasion to see an Officer Smith as well?

Case #2327 Officer Brown

Transcribed by MGM 10-11-13 Reviewed by BN 10.22.13

- GB: Yes.
- LS: And when did he arrive?
- GB: Shortly thereafter.
- LS: And were you able to contact the reporting party?
- GB: Initially, no, he was not out front; I contacted the dispatcher and asked that they call him to let us in because it's a secure building.
- LS: Okay.
- GB: And probably within a minute or so the reporting party walked up to us and said he was the one that called.
- LS: And was his name Mr. Hayes?
- GB: Yes.
- LS: All right. And did Mr. Hayes provide you with any further information at that time?
- GB: He said that his roommate had kicked him out, he was off his meds, he's schizophrenic, had been drinking heavily and also doing lots of drugs.
- LS: And did he at that time clarify what kinds of drugs he was talking about?
- GB: He said he'd been doing meth, drinking a lot of alcohol; I believe he said he was smoking weed as well.
- LS: Okay. And did he mention you might have just said this I might have not heard you did he mention to you why he was no longer at the apartment?
- GB: Yes, he said his roommate had gotten into an argument with him because he wanted the roommate wanted money for to purchase more drugs and alcohol and he told him he didn't have any money. The roommate didn't believe him and told him to get out.
- LS: Were you aware whether Mr. Hayes was, you know, legitimately a roommate, supposed to be at that apartment kind of thing?
- GB: I asked was he on the lease at the apartment and he said he was.
- LS: Was there anything else that comes to mind that Mr. Hayes told you at the scene before you went to the apartment?
- GB: Not that I can think of.
- LS: In your police report on Page 4 you did mention about, "Hayes had left the apartment because he thought Moore was going to attack him and he feared for his safety." Let's see where this is –

Case #2327 Officer Brown

- GB: Yes.
- LS: It's it's right there in the second paragraph up, maybe the fourth line from the bottom of that paragraph.
- GB: Yes, it's page 7...
- LS: Okay. And it says in your report, "Hayes said he left the apartment because he thought Moore was going to attack him and that he feared for his safety." Was this a statement that he made to you at the scene when you first arrived or was this something that you learned later through a later interview of Mr. Hayes?
- GB: I believe he said that when I initially spoke with him.
- LS: Okay. And when you prepared your report did you have occasion to read any other police reports associated with this incident before you wrote yours?
- GB: No, I I started my report first and supplements came in at the time I was writing my report.
- LS: So were there any statements taken by other officers of other people that you included in your report?
- GB: I know there was a statement taken by Mr. Sterling and I know for a fact, Mr. Sterling.
- LS: Was that taken by you or a different officer?
- GB: No, a different officer.
- LS: Was that information relayed to you and then you put that in your report?
- GB: Correct.
- LS: And then what about Mr. Hayes, was he also interviewed subsequent to this incident?
- GB: Yes.
- LS: By whom?
- GB: I don't remember.
- LS: Was it you?
- GB: It could've been.
- LS: Okay. Would it refresh your recollection if I told you it was Officer Smith that interviewed Mr. Hayes?
- GB: Yes.

- LS: Let me look here to be sure on Page 1 Officer Smith's report at the bottom it says, "I contacted Hayes and obtained a signed written statement from him."
- GB: Okay.
- LS: Does that refresh your memory?
- GB: Yes.
- LS: Now when you first arrived at this location and you're still outside and you're with Officer Tu and then Officer Smith arrives, is that right?
- GB: Yes.
- LS: Does Officer Smith say anything to you when he shows up?
- GB: Yes.
- LS: What did he say to you?
- GB: He asked was the individual that we were going to contact was his name Xavier Moore and I said "Yes," and he said, "There's a warrant for Xavier Moore out of San Francisco." And I said, "Well, this Xavier Moore just moved from San Francisco."
- LS: Did he describe how much the warrant was for?
- GB: I believe he said \$10,000.
- LS: And after you said, "I believe this individual just moved from San Francisco," did he respond to that?
- GB: No, I don't recall any response.
- LS: Did he at some point return to his vehicle after he made that statement to you?
- GB: He did.
- LS: And before he returned to his vehicle did he say why he was going back to his car?
- GB: I don't recall him saying anything.
- LS: If I can direct you to your transcript this is from the interview that you did in the criminal investigation from February 14th and I have a copy here if you need one on Page 323, Page 10 of your report your interview, sorry and then I don't know if you have a stamp at the bottom of yours, looks like you don't that will be page 10, line 442.
- GB: Okay.
- LS: You mention that this particular individual just moved from San Francisco and he said, "Let me go back to my car just to make sure."

Case #2327 Officer Brown

- GB: Okay.
- LS: Does that refresh your memory at all?
- GB: Yes.
- LS: Did he state that say that to you before he went back to his car?
- GB: I'm sorry.
- LS: Did he make that statement to you before he went back to his car?
- GB: Yes.
- LS: Okay. And what happened next what did he do then?
- GB: We Officer Tu and I was still outside talking with Mr. Hayes and then we went upstairs and Officer Smith came up with us –
- LS: Okay.
- GB: We went up on the elevator.
- LS: I'm sorry, are you finished?
- GB: Yes.
- LS: How far away were you with Officer Tu and Mr. Hayes when Officer Smith goes back to his car?
- GB: His car was parked fairly close, so probably a car or two away.
- LS: Do you know what he was doing in his car?
- GB: Well, based on my statement, he was probably running to make sure the warrant was valid.
- LS: Is that something that you have personal knowledge about or is that something that you were putting together based on your observations of the situation?
- GB: Based on my observation of the situation.
- LS: Now at any time before you went upstairs did Officer Smith say anything to you outside while you are still outside specifically about the warrant?
- GB: Other than the fact that there's a Xavier Moore that has a \$10,000 warrant?
- LS: Yes, like well, let me direct you to after he went to his car –
- GB: Yes.

- LS: did he did you then have any further conversation with him –
- GB: No.
- LS: outside the apartment about the warrant?
- GB: Not that I recall.
- LS: Do you remember him asking you any questions about the warrant after he went to his car and before you went back up to the apartment?
- GB: No.
- LS: Did he make any inquiries of you outside the apartment about what age Xavier Moore was?
- GB: I don't recall that.
- LS: Do you while you were outside did you did Officer Smith make any statements to you about whether, you know, he was concerned about whether or not it was the same Xavier Moore that you guys were about to go contact?
- GB: Not that I recall.
- LS: Outside of the apartment, before you went upstairs, did Officer Smith make a statement to you that he did not think that it was the same person that he mentioned having a warrant because of a difference in a date of birth or age?
- GB: No, I don't recall that.
- LS: So at the time that you go upstairs to make contact for the very first time, what specific information were you aware of about the existence of any warrant for a person named Xavier Moore?
- GB: I I believed that Xavier Moore had a \$10,000 warrant.
- LS: Okay.
- GB: And I believe that it had been confirmed.
- LS: And when what is this sort of kind of standard procedure for confirming a warrant?
- GB: You can do it two ways: you can have the dispatcher confirm it or you can go to the car and do it on your computer.
- LS: If you do it on your computer what kind of information can you get about warrants are you limited to only warrants in Alameda like AWS or are there other any limitations on the kinds of warrants you can run on the computer in your car?
- GB: You can get warrants from basically anywhere.

- LS: Okay.
- GB: It's just a different procedure when you're confirming them.
- LS: Okay. Can you describe what that procedure is?
- GB: You have to have the dispatcher confirm the warrant. Basically what we see is if there's an active warrant in the system and then if we're going to have if we're going to arrest the person on that warrant, we would have the dispatcher confirm it. If it's a local warrant, it's fairly easy; if it's out of state or a different county then they have to call that agency –
- LS: Okay.
- GB: and get it confirmed.
- LS: So on your computer system in the car you can see active warrants?
- GB: Yes.
- LS: Is that accurate?
- GB: Yes.
- LS: Okay.
- BN: Active local warrants?
- GB: Local meaning well, they can be in different counties –
- BN: Mmm-hmm.
- GB: as well, yes.
- LS: Not necessarily out of state?
- GB: Right.
- LS: Okay. So you could see an active warrant in your computer for San Francisco?
- GB: Yes.
- LS: And if it's in San Francisco would you need to then call dispatch and have them do some extra confirmatory work to make sure that it's valid and it's active?
- GB: If you're going to arrest that person on the on the warrant.
- LS: Is that a procedure that your department requires you to do if you're going to effectuate an arrest?

- GB: Yes, you have to make sure that it is a valid warrant.
- LS: Now, is there any way that an officer can contact dispatch to confirm a warrant through you know how do they do that, through the computers, through the radio?
- GB: Through the radio; they could do it through the radio.
- LS: At the time that you went upstairs to the apartment, did you have any reason to believe that the warrant for a person named Xavier Moore was for the same person you were going to be contacting?
- GB: I believed it was for the same person.
- LS: And what caused you to come to that conclusion?
- GB: There are very few Xavier Moores, and the fact that this individual the warrant was out of San Francisco and this person had just moved from San Francisco to Berkeley.
- LS: Did you were you aware of the gender of the person that this warrant was for as it was related to you?
- GB: Yes.
- LS: What were you told about the gender of the person?
- GB: A male.
- LS: And was that was there any with regard had you had any prior knowledge of the Xavier Moore that you were going to be contacting at this apartment?
- GB: Yes.
- LS: Can you describe that prior knowledge?
- GB: His mother called I don't recall when and she was concerned because she had received a call from him and he was depressed and she asked for a welfare check; so Officer Galvan and myself went out to contact him, but he was not home, so I never met him –
- LS: Personally?
- GB: Right, until that night. I re-contacted his mother and told her he wasn't there and that pretty much was the end of that contact.
- LS: And I ask this question as it goes to your understanding of Xavier Moore's gender at the time that you're making contact and your knowledge of the warrant, that's why I'm asking this question. When you had a conversation with Xavier Moore's mother, was any information related to you about Xavier's gender or status of gender?
- GB: I believe she said he was going through a transition to have a sex change.

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- LS: And for purposes of our subsequent questioning I'm going to refer to Xavier Moore as Ms. Moore, okay? GB: Well, I dealt with a Mr. Moore. LS: Do you feel more comfortable using Mr. –
- GB:
- Yes. LS:
- GB: Yes, because I feel that he was a male and that's who I was having contact with.

- Moore? Would that facilitate the questioning more easily for you?

- LS: Okay. And during the time that you made contact with the person, how, what gender were you identifying that person as?
- GB: Initially when Mr. Moore came to the door, I thought it was a female, and as I spoke with him I could see that he was still a male.
- LS: Was there anything about your initial observation of Xavier Moore in thinking perhaps that person was a female that called into question your ability that this warrant was, you know, for a man, that maybe this was not the right person?
- GB: No.
- LS: Okay.
- BN: You said that you don't remember the time specifically, but you had responded to the call from his mother?
- GB: Yes.
- BN: And can you at least guesstimate maybe the year, was it a year ago, two years ago?
- GB: No, it's in the same year, maybe a month or so.
- BN: Oh, so it was earlier in 2013?
- GB: Yes.
- BN: I see. And you said earlier that you believe that this individual had moved from San Francisco?
- GB: Yes.
- BN: And why did you believe that?
- GB: The mother told me.
- BN: She told you when she contacted you initially?

- GB: Yes.
- BN: I see, thank you.
- LS: All right. So, at the time that you go up to the apartment and Officer Smith is in his car or when he goes back to his car, you had mentioned that you believed that he was confirming a warrant, is that accurate?
- GB: Yes.
- LS: Okay. Did you ask Officer Smith to confirm the warrant?
- GB: No.
- LS: So, eventually, do you contact Xavier Moore at an apartment upstairs at that location?
- GB: Yes.
- LS: And can you just describe sort of what your role is and what the role of Officer Tu is and Officer Smith?
- GB: Officer Smith, Officer Tu, and Mr. Hayes, and myself, all went up to the apartment. I had Mr. Hayes unlock the door because he had his own key and he opened the door slightly. At that point I asked Mr. Hayes to step...step to the side and I called out to Mr. Moore and then Mr. Moore came to the door.
- LS: Okay. And what's your role in regard to the scene are you the lead officer?
- GB: I'm the primary handling officer.
- LS: Okay, what is the primary handling officer was does that mean what tasks are you charged with?
- GB: I'm making contact with him. I'm going to get the information to determine if there's a crime or if they need some assistance and the other officers are cover.
- LS: And who in these roles, who makes the decisions about whether someone is going to be detained, further investigation, whether someone needs to be arrested or taken into custody?
- GB: I would then.
- LS: And can you describe your observations of Xavier Moore I'm talking about demeanor, condition, all those things.
- GB: Initially when I contacted him and I asked if he was Xavier, he said, Yes, and I said, "Well, we're here because your roommate called us and said that he was kicked out." I asked him, "Do you want to tell me what's going on?" He started talking about the FBI was following him and that he didn't feel safe. He talked and his demeanor switched and he started talking as if he knew me personally. He started calling me various female

 names and I told him I wasn't either of those people, and he – he made the statement, "Well, I see them behind you. They're standing behind you." Then he went back to saying that the FBI was following him and then he switched to talking about dinosaurs and I kept trying to keep him on track and asked, "What's going on with you and your roommate," and he referred to the roommate as *crunchy*, *crunchy*, and he said, "Crunchy is always *F'ing* up," and I said, "Well, who is crunchy?" and he pointed to Mr. Hayes. And he – he made some statement regarding, "Are you going to act right now, crunchy?"

LS: Did he direct this to Mr. Hayes or-?

GB: Yes, and I then tried to bring him back on track as to what's going on here and he kept talking about the FBI and –

LS: Okay.

GB: (inaudible) and he did make a statement that – he said, "You all are not real police officers." And I said, "Yes, we are police officers with the Berkeley Police Department."

BN: In your interaction with him at the – this was at his apartment?

GB: Yes.

BN: Did you refer to him as Mr. Moore?

GB: I initially called out Xavier and he came to the door.

BN: Yes.

GB: And I said, "I'm looking for Xavier. He says, "I'm Xavier."

BN: But during your interchange did you at any point refer to him as Mr. Moore?

GB: It's possible (inaudible). I may have referred to him as Xavier.

BN: As Xavier or Mr. Moore?

GB: I believe Xavier.

BN: Xavier Moore?

GB: Xavier.

BN: Did he object to your use of Xavier Moore?

GB: No.

BN: Okay.

LS: What kind - you mentioned that you were asking questions, what kinds of questions are you trying to ask?

Case #2327 Officer Brown

Transcribed by MGM 10-11-13 Reviewed by BN 10.22.13

- GB: What's going on between the roommate and him? Why was the roommate kicked out of the apartment?
- LS: And what was his level of responsiveness to the questions?
- GB: It appeared that he had troubled focusing, because he kept going back to the the FBI is following him it was hard trying to keep him on track.
- LS: Okay.
- BN: Can you describe his physical demeanor?
- GB: In terms of he was very theatrical.
- BN: Mmm-hmm.
- GB: He kept flipping his braids and he was standing in the doorway kind of like, you know, leaning up against the frame of the doorway flipping his braids.
- LS: It looked like you were holding your hand up, against leaning -
- GB: Leaning up against the doorway.
- BN: Was he relaxed was he nervous can you just describe it further?
- GB: No, he was he was bubbly, excited but not to the extent where he was just shuffling around, you know.
- BN: Did he make eye contact with you regularly?
- GB: Yes.
- LS: How long did you interact with Xavier at the at the doorway and talk?
- GB: At least, I would say, 10 minutes.
- LS: Were you and Officer Tu and Officer Smith in full uniform?
- GB: Yes.
- LS: Badges and everything you're wearing today?
- GB: Yes.
- LS: Okay. And where was Officer Tu positioned and Officer Smith positioned while you're having this conversation with Xavier?
- GB: Officer Tu was to my right on the right side of the door frame; I was to the left; Mr. Moore was in the doorway. Mr. Hayes was a little further to my right, and Officer Smith was talking to him, so he was next to Mr. Hayes.

- LS: How far away from you distance-wise, approximation was Smith from you?
- GB: Maybe 10 or 15 feet.
- LS: So as you're facing Xavier Moore in the doorway, you're facing Xavier, and you are on Xavier's right?
- GB: I am on the left side of the door frame and –
- LS: As you're facing Xavier?
- GB: Yes.
- LS: Okay. And when you're facing the left side of the doorway, it is is that opposite to Xavier's right side? Is Xavier facing you?
- GB: Yes.
- LS: Now at some point while you're talking to Xavier, did you become aware of whether Officer Smith was doing any kind of checks for warrants while you're standing outside of the apartment?
- GB: Yes.
- LS: What did you become aware of?
- GB: He stated that Mr. Hayes had a \$5,000 warrant.
- LS: And did he ask you any questions about what he should do about that?
- GB: To have it confirmed. And I told him to confirm it.
- LS: And did you have any knowledge of whether he did that?
- GB: He said he had.
- LS: Did you observe him using his radio or having any conversation with Dispatch in your presence?
- GB: I was more focused on Mr. Moore.
- LS: Okay. And at some point does he respond to you saying, Yes, go ahead and confirm that warrant on Hayes?
- GB: Yes.
- LS: And what does he say or do –is it verbal (inaudible)?
- GB: He said that the warrant was confirmed and I asked him to transport Mr. Hayes to the police station.

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LS: And are you familiar with the General Order W4, Arrest Warrants?

GB: Yes.

LS: Okay.

Rep: Thank you. Go ahead...

LS: I was waiting.

Rep: (Inaudible)

LS: When you're working as – when you have a cover officer working with you, are there occasions where you share tasks at a scene?

GB: Yes.

LS: And is, you know, one officer confirming a warrant while another officer is engaged with a subject, is that consistent with your training and experience on the job?

GB: Yes.

LS: And is there anything unusual about another officer confirming a warrant as opposed to you doing it personally yourself?

GB: No.

LS: And when you are on scene and another officer is, you know, checking information about a warrant or confirming it, do you have occasion to rely on that information?

GB: Yes.

LS: And specifically what information do you typically use to (1) locate whether someone has a warrant and (2) to confirm it?

GB: Usually if we – if we have the dispatcher do it, we get the person's physical date of birth the name and race, and the dispatcher will then look in the system to see if there are any active warrants.

LS: Okay.

GB: He or she comes back and let us know if there are.

LS: Okay. And that's if you're having a dispatcher confirm a warrant?

GB: Yes.

LS: Okay.

GB: That's for having the dispatcher check for warrants.

- LS: Check or confirm?
- GB: Check for warrants.
- LS: And what's involved in the confirmatory process?
- GB: Dispatch will notify you saying this person has an active warrant or he or she doesn't. If they have a warrant, they will ask do you want it confirmed, and at that point you tell them yes or no.
- LS: And if it's out of county specifically let's say San Francisco, would that be important to have that confirmed because it's in a different county?
- GB: Well, they would have to call, because it's a different county.
- LS: And do you know who Dispatch calls?
- GB: The dispatchers.
- LS: In another county or do you know who your dispatchers reach out to or who they call to get that information from another county?
- GB: I'm not a dispatcher so I don't know who they call.
- LS: In your experience what kind of timeframes do this does this process take to confirm a warrant?
- GB: It's pretty quick depending on if it's local. It can take longer if it's not because sometimes it takes a while for them to get in touch with whomever they need to speak with to confirm it.
- LS: And when you say *local* what do you mean by that?
- GB: Like a Berkeley warrant, Oakland Alameda County, per se.
- LS: Okay. So you've mentioned a date of birth being used to confirm a warrant prior to arriving at this Allston location had you been provided with a date of birth for Xavier Moore?
- GB: No.
- LS: Is there a mechanism by which people can be run without a date of birth for a warrant?
- GB: They can.
- LS: And how's that done?
- GB: By their name, driver's license number.
- LS: What about a name only?

- GB: Normally you don't get good information.
- LS: I'm sorry, what did you say?
- GB: Normally you don't get get information with just a name.
- LS: Okay.
- GB: You usually need a little more than a name.
- LS: Are there occasions where you do get, you know, bundles of names with warrants_that are similar?
- GB: You you'll get bundles of names, yes.
- LS: During the time that you were in contact with Xavier Moore did you obtain any kind of identifying information?
- GB: No.
- LS: And what about for Mr. Hayes, did you get any identifying information for Mr. Hayes?
- GB: No, other than he identified himself when he walked up to us.
- LS: But not, you know, handing over an ID or anything specific like that?
- GB: No.
- LS: Do you know how Officer Smith was able to confirm the warrant on Mr. Hayes?
- GB: I would have to assume, because he was still up there with us that he did it on his radio.
- LS: Were you aware of any specific identifying information that was provided to Officer Smith by Mr. Hayes?
- GB: I was not.
- LS: Did you overhear them speaking or engaging with one another?
- GB: No.
- LS: And I know it's been a while since this interview, so, I believe your interview was back in February, so, if I can direct your attention to Page 10 of your interview line 406, "Officer Smith is taking down Mr. Hayes' information." Did you make that statement?
- GB: Yes.
- LS: What did you mean by that taking down Mr. Hayes' information?
- GB: It's name, and I guess date of birth, and things of that sort.

- LS: And while you're in contact with Xavier Moore, do you personally get Xavier's date of birth?
- GB: No.
- LS: Did you ask Xavier for any other personal identifying information?
- GB: No.
- LS: And apart from Xavier coming to the door after you inquired, you know, Xavier at the door, did you know that person's last name?
- GB: Based on just the information on my computer screen.
- LS: That caused you to think that that was Xavier Moore?
- GB: Yes.
- LS: Okay. And was there any recognition between Mr. Hayes and Xavier Moore?
- GB: In terms of did he recognize him?
- LS: Did Mr. Hayes Mr. Hayes directed you to this apartment?
- GB: Yes.
- LS: Prior to going to the apartment did you have any knowledge about Xavier Moore's age?
- GB: I don't recall.
- LS: And during your contact with Xavier at the apartment, did you have occasion to fill out a field identification card for specifically for Xavier Moore?
- GB: No.
- LS: Did anyone in your presence fill out a field identification card for Xavier?
- GB: I don't know. I know I did not.
- LS: And specifically, just for purposes of our conversation, what is a field identification card?
- GB: It's basically a card where you get their the primary information and name, date of birth, height, weight, hair color, eye color, or/and it could be the clothing description, and the location where you are.
- LS: And what is the purpose for filling one of those cards out what are they used for?
- GB: Well, it they can be used for a couple of things if we are going to have contact with this person in the future, a lot of officers will keep their own, will setup cards with the information on it or, you know, if and it's not in this particular case there was a series

- of robberies or something going on and that person was a suspect, we'd send that card up to Robbery so that they could have a card on who we thought was possibly the suspect.
- LS: Okay. Are they used to assist officers in getting information for the purpose of running a warrant?
- GB: That too.
- LS: And if one is filled out, typically what happens to it once it's filled out?
- GB: Like I said, if we needed it for for the robbery detectives or something we would send it out to them. If we're keeping it for ourself, we keep it in our own little briefcase, but normally it's discarded.
- LS: And is discarding it, you know, is that a violation of any policy or procedure, is that is discarding an FI card -
- GB: Not to my knowledge.
- LS: not inappropriate or anything?
- GB: Not to my knowledge.
- LS: Okay. Is the information from an FI card sometimes used to incorporate into a police report?
- GB: When we're filling out the form.
- LS: During your contact with Xavier at this apartment, did any officer hand you a field identification card?
- GB: No.
- LS: Either outside of the apartment or upstairs at the apartment, did you have any personal knowledge to believe that Officer Smith was running a warrant or confirming a warrant for Xavier Moore?
- GB: It was my impression he'd confirmed the warrant.
- LS: When did you reach that impression?
- GB: When he went back to his car.
- LS: Could Officer Smith have confirmed the warrant without a date of birth for Xavier Moore at the time when he went back to his car?
- GB: It depends if he had additional information on Mr. Moore.
- LS: If he did not have any additional information, could he have confirmed it without the date of birth?

- GB: If he had the driver's license and sometimes they can use addresses.
- LS: And sometimes an address you say?
- GB: Yes.
- LS: Could Officer Smith confirm the warrant on Xavier Moore with just the name *Xavier Moore*?
- GB: If that was the only Xavier Moore and the physical matched that of the individual, and that of course you you (inaudible) that particular person –
- LS: Okay.
- GB: questions.
- LS: Did Officer Smith ask Xavier Moore any identifying questions in your presence?
- GB: No.
- LS: And did you specifically ask Officer Smith at any time during this interaction whether it's outside the apartment or upstairs did you ever ask Officer Smith to confirm that warrant on Xavier Moore?
- GB: No.
- LS: Did he specifically use the statement *confirmed* that he had in fact confirmed it?
- GB: I'm sorry.
- LS: Let me rephrase that. Did Officer Smith ever specifically tell you, *Officer Brown, I've confirmed the \$10,000 warrant on Xavier Moore?*
- GB: No.
- LS: So I want to just isolate the word *confirm*, he never used the word *confirm* that he had done that.
- GB: No.
- LS: Was there any particular reason in your mind set that you did not ask Officer Smith to confirm the warrant on Xavier Moore?
- GB: When he went back to his car, I believe that's what he was doing.
- LS: And after forming that belief did you follow up with him in any way to confirm whether that was the case or not?
- GB: No.

- LS: At some point does Officer Smith depart this apartment, does he leave?
- GB: Yes.
- LS: He leaves with Mr. Hayes?
- GB: Correct.
- LS: At what point in your interaction with Xavier Moore does Officer Smith depart the location?
- GB: We were still out on the landing in front of the door talking with Mr. Moore.
- LS: How much more talking goes on after Officer Smith leaves?
- GB: Probably a couple of minutes, not very long.
- LS: At the time that Officer Smith leaves had either you or Officer Tu engaged in any kind of physical touching of Xavier Moore?
- GB: No.
- LS: And prior to Officer Smith leaving did you personally receive any kind of information, specific information, to suggest to you that Xavier Moore did not have a warrant?
- GB: No.
- LS: Did Officer Smith make any statements to you that Xavier Moore did not have a warrant?
- GB: No.
- LS: Did Officer Smith hand anything to you to communicate anything to you in that regard?
- GB: No.
- LS: So at the time that Officer Smith leaves, what is your mindset with regard to whether Xavier Moore has a warrant?
- GB: That he had confirmed the warrant.
- LS: If I can ask you some general questions about if you could just describe any training and experience you have in doing 11550 evaluations?
- GB: I believe we my training is basically consists of I believe just a brief segment when I went away for DUI school, they touched on drug in terms of looking at their eyes and how the eyes track back-and-forth. I believe we had some roll-call training in briefing but nothing extensive.
- LS: Okay. Let's just clarify what's 11550.

- GB: Yeah, a person under the influence of drugs.
- LS: And have you in your career made arrests for people that are suspected of being under the influence of drugs?
- GB: Mine have consisted of alcohol.
- LS: Okay.
- BN: Would you say mostly or exclusively?
- GB: I don't recall making an arrest for drugs –
- LS: Okay.
- GB: under the influence. I do recall many under the influence of alcohol.
- LS: Okay, and under the influence of alcohol is a separate code section from 11550?
- GB: Yes.
- LS: Okay, so 11550 is specifically drugs?
- GB: Correct.
- LS: Have you conducted any investigations into whether anyone is under the influence of drugs?
- GB: No, not to my knowledge.
- LS: And can you also describe any training and experience that you have in doing 5150 determinations whether someone needs to be detained for an evaluation?
- GB: I've written many 5150 forms. In terms of the training more or less, the roll-call training in the briefing, working with the Mental Health workers, being told what to look for.
- LS: Can you describe what you've been told what to look for?
- GB: We're told to look at their behavior, do they appear to be a danger to themselves or to others, are they capable of caring for themselves.
- LS: You mentioned that you've I think you said you've written many 5150 forms, what do you mean by that?
- GB: When we get a call of someone acting neurotic or something to that nature, you respond, you evaluate the person. Normally our Mental Health workers will fill out the green sheets if they're on duty. If it's after hours, then the officers, if the person needs criteria for 5150, we'll write the form. And that's usually when we ask them if they feel that they are going to harm themselves or based on statements they make, if they're going to harm themselves or others, and if they appear to be able to care for themselves.

- LS: You said you've written many forms for a 5150 that you've done yourself, is that right?
- GB: Yes.
- LS: How many have you –
- GB: I don't know.
- LS: done? Like a ballpark?
- GB: I don't -
- LS: More than 50 less than 20 more than 20?
- GB: I don't know.
- LS: But you described it as I think the word is many.
- GB: Yes.
- LS: Okay. Is any kind of prior knowledge of the subject a factor for you to consider when you're determining whether you need to 5150 somebody?
- GB: It can be if you have prior knowledge you're looking for something that would confirm that particular information.
- LS: And if I can show you what we we've marked this as PRC6 it's just a simple piece of paper, do you recognize what that is?
- GB: A 5150 form.
- LS: Okay and on the original it looks like there's a white top sheet and then there's 1, 2, 3, three duplicates that are green.
- GB: Yes.
- LS: What's known as the green sheet?
- GB: That's the the section that goes with the patient to if they're going to John George.
- LS: Okay so there's 4 copies here.
- GB: Correct.
- LS: they're all the same.
- GB: Yes.
- LS: First copy is white, next three copies are green?

GB: Yes.

LS: And you mentioned sometimes a Mental Health worker fills this out and sometimes the officer who does the 5150 would do it themselves, is that right?

GB: Yes.

LS: Okay. When is this document typically filled out?

GB: At the scene.

LS: At the location where someone is 5150'd?

GB: Yes.

LS: And the document I'm referring to is PRC6.

GB: Okay.

LS: And on the night in question that we're talking about, did you have the assistance of any kind of Mental Health worker at that time?

GB: No.

LS: Why is that?

GB: It was on – they were off duty at that time.

LS: Are we talking about Mobil Crisis?

GB: Yes.

LS: Okay, that's separate from CIT?

GB: Yes.

LS: And on this particular night that we're talking about where you had contact with Xavier Moore, was there any particular reason that you did not make an inquiry to call for a CIT trained officer to that location where Xavier Moore was?

GB: I was not aware of a CIT officer.

LS: Oh, I'm sorry.

GB: I was not aware of a CIT officer.

LS: Okay, to call?

GB: I was not aware of the CIT officers.

- LS: Okay.
- GB: Yes.
- LS: Were you aware of any obligation to call for CIT, or –
- GB: No.
- LS: During your interaction with Xavier as you're talking and time is going by, did you make some kind of decision ultimately to take Xavier into custody?
- GB: Yes.
- LS: And can you describe what your reasons were for doing that?
- GB: Mr. Moore could not focus. He appeared to be delusional because he told me he saw people first he thought I was certain individuals and when I explained to him that I was not, he said that those individuals were standing behind me, which of course they were not, and his level of concentration and the fact that he kept speaking about things that were not being spoken on with regards to the FBI, and talking about dinosaurs, and so he was not making any sense.
- LS: And when you say you made the decision to take him into custody, was there a specific theory under which you were doing that you mentioned delusional what were the reasons that you took him into custody I mean the trying to get a little more specific information. Your decision to take Xavier Moore into custody was to do what?
- GB: Well, he was being taken into custody on the warrant and he was going to be evaluated for 5150 once in custody.
- LS: Okay, so you decided to take Xavier into custody based on a warrant and to do a 5150 evaluation?
- GB: Correct.
- LS: Okay. And with regard to the decision to take Xavier Moore into custody for a 5150 evaluation, were you aware of any facts or information that were pertinent to whether Xavier was a danger to self, others, or was gravely disabled as a result of a mental disorder?
- GB: Based on Mr. Hayes' information that Mr. Moore had been doing drugs all day and drinking heavily and the fact that he had been off of his medication for schizophrenia; those were also factors I took into consideration.
- LS: And you said also factors, is that in addition to the ones you mentioned earlier?
- GB: Yes.
- LS: Okay.

- LS: All right, and, if I can ask you if you're familiar with are you familiar with the department's General Order I-16, Mentally Disordered Persons?
- GB: Yes.
- LS: And at what point during the contact with Xavier did you decide that you were going to take Xavier into custody for 5150?
- GB: Well, he was being taken into custody for the warrant and he was going to be evaluated for 5150, and that was, I would say, when he started calling me various names and then said that those individuals were standing behind me. At that point I came to the conclusion that he was delusional.
- LS: Okay. If we take the warrant and we set it aside, what was your mindset with regard to any potential for taking Xavier into custody for 5150?
- GB: He would've gone in for 5150.
- LS: So when you take someone into custody for a 5150, are there occasions where you handcuff them? I'm just talking about 5150 by itself.
- GB: Yes.
- LS: And what would those situations be where you would take someone into custody on a 5150 and you utilize handcuffs?
- GB: Normally if they pose a danger to themselves or to others being me, they will be handcuffed. Also when they're transported it depends on their behavior, if the paramedics want them cuffed or not, they will tell us.
- LS: And had you formed any, apart from the warrant, formed any observations or opinions about whether Xavier would need to be handcuffed under a 5150 basis?
- GB: Being that I was told that he'd been doing a lot of drugs, drinking, and he was delusional, those were red flags for me, and I was concerned for his safety as well as mine.
- LS: Okay. At some point did you advise Xavier that you were about to take take him into custody?
- GB: I told Mr. Moore that he had a warrant and we needed to go down to the station to take care of it.
- LS: And how what was the response?
- GB: He said he did not have a warrant.
- LS: And what did you say?
- GB: I told him he did have a warrant and we needed to go to the station to clear it up.

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- LS: And how what was the response if any?
- GB: He was he was angry; he says "No, no". He said, "I'm gonna go in the house here and call the FBI and get this cleared up." And I said, "Well, you could use the phone at the station to call the FBI."
- LS: When Xavier Moore told you "No, I don't have a warrant," did you engage in any additional action to try to confirm if that was the case or not?
- GB: No.
- LS: Why not?
- GB: The officer who had who did the computer check was gone and I knew he was going into custody even if it was for the 5150. I chose to tell him about the warrant, because I felt it would be easier for him to accept as opposed to telling him he was going to be 5150'd.
- LS: What caused you to arrive to that conclusion?
- GB: Because he's been 5150'd before.
- LS: Was that something that you were aware of at the time you were having this conversation?
- GB: Yes.
- LS: What caused you to believe that there might be some kind of a reaction that was not desirable that caused you to choose to raise the warrant instead?
- GB: Most people don't like being 5150'd. I've had better luck telling them they had a warrant when they've had a warrant.
- LS: Is there any requirement that you tell someone I'm arresting you. You have a warrant. I'm arresting you on your warrant?
- GB: Well, I always inform people why they're being arrested.
- LS: Okay. With regard to 5150, is there a advisement that is required to be given when you detain someone under 5150 that is noted on this form here the detainment adviser?
- GB: Yes.
- LS: I'm sorry, detainment advisement.
- GB: Yes.
- LS: And if I could just read it into the record, it says, My name is state your name I'm a peace officer, physician, etc. with department or medical facility. You are or are not under criminal arrest, but I am taking you for examination by mental health professionals

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Transcribed by MGM 10-11-13 Reviewed by BN 10.22.13 at - name of facility. You'll be told your rights by the mental health staff. If taken into custody — and then the rest is taken into custody. If taken into custody at his/her residence, the person shall also be told the following information in substantially the following form: You may bring a few personal items with you which I would have to approve. You can make a phone call and/or leave a note to tell your family and/or friends where you have been taken. Are you familiar with that advisement?

- GB: Yes.
- LS: Okay, did you give this advisement to Xavier Moore?
- GB: No.
- LS: Can you tell me why not?
- GB: Because I was taking him in custody for the warrant.
- LS: Now at the time that you advised Xavier Moore about the warrant, what was the reaction?
- GB: He became angry. He said he did not have a warrant.
- LS: And at some point did you have occasion to physically go put your hands on Xavier?
- GB: Yes.
- LS: Can you describe what how that took place?
- GB: I looked at my partner Officer Tu and indicated for him to go hands on.
- LS: How did you do that?
- GB: I looked at him and nodded and at that point Officer Tu grabbed one arm or the wrist and I grabbed the other and said, "You need to come with us." He immediately started struggling, pulling away.
- LS: When you took you grabbed onto a wrist, were you using your hands?
- GB: Yes.
- LS: Where were the your handcuffs at this time?
- GB: In my handcuff case.
- LS: So, as you're initially making contact with Xavier's wrist that's with hands only not, you know, trying to actually put the cuff on?
- GB: That's correct.
- LS: Okay. So after you and Officer Tu grabbed the two wrists, what happens at that point?

- GB: He immediately pulls back, trying to free his his wrist and he yells I believe, "No, no." And I believe I told him, "Stop struggling" or something to that effect. "Stop resisting."
- LS: What happened then?
- GB: He continued to resist. He pulled back and start to turn and I still had his wrist and Officer Tu still had his wrist, and he jerked and we fell into the apartment and onto this mattress where we were still trying to get control of his wrists.
- LS: The initial attempt to put hands on the wrist, is that occurring inside of the doorway or outside of the doorway?
- GB: It's right in the threshold. He's he's pretty much standing outside the doorway and Officer Tu takes one and I take the other.
- LS: And so how much distance is from the time where you put your hands onto when you later end up on a mattress what kind of distance are we talking about?
- GB: This is a very, very small apartment I would say probably a few feet, 4-5 feet.
- LS: Okay, and can you describe the level of resistance so I can sort of see it in my mind if I wasn't there?
- GB: He he was very violent. His actions were that he was not going to jail. He struggle with us. He tried to free his wrist. When we fell onto the mattress, he's still trying to pull away. We were able to get one wrist into cuffs. He buried the other wrist up under him. And we're constantly saying, "Stop resisting stop resisting," and we're trying to free the wrist to put it in the cuff, 'cause we were able to get one on at that point.
- LS: And when you say We is this -
- GB: Officer Tu and myself.
- LS: Okay.
- BN: You said that you all fell onto a mattress?
- GB: Yes.
- BN: And was it a single mattress?
- GB: Yes, it was on the floor.
- BN: On the floor.
- LS: When –
- BN: Go ahead.
- LS: Sorry. When you the fall takes place, like, describe how that happens.

- GB: Well, he he initially, he goes back, he's pulling us back and he's trying to get away from us and he's trying to turn, and Officer Tu is holding on to him with both hands and I'm holding on with two and we just go back well, it would be going forward –
- LS: Okay.
- GB: for us and backwards for him. And he fell onto the mattress and we fell onto the mattress.
- LS: So when he falls onto the mattress and you fall onto the mattress with him, does anyone fall on top of Xavier's body?
- GB: I'm on the side of him and Officer Tu is, I believe, on the side, on the opposite side, when we initially fall onto the mattress.
- LS: And how does Xavier fall on the back or on the stomach?
- GB: He's partially on his side and then he rolls over to his stomach.
- LS: And then you mentioned there's a hand that is underneath the body.
- GB: Correct.
- LS: What if anything did you do about that?
- GB: We were trying to free that hand to put it so we could get the cuff on it and he's he's constantly tucking it, would not release his his arm.
- LS: How are you trying to get the hand out?
- GB: Trying to go up under him to pull the hand out.
- LS: Does any other officer arrive at some time while this is going on?
- GB: I called for additional cover and I don't recall if it was two or three at the time that came in and assisted us.
- LS: Can you describe any kind of physical force that you used on Xavier in order to get handcuffs put on?
- GB: Basically trying to get his arm from up under him and when that was done we applied the cuffs.
- LS: So just limiting your force, your application of force to the arm –
- GB: Yes.
- LS: and pulling?
- GB: That's correct.

- LS: Any other application of force to effectuate the handcuffing?
- GB: No.
- LS: And what about Officer Tu what were your observations in that regard?
- GB: He was trying to get the hand free as well.
- LS: And while this is happening, how is Officer Tu positioned?
- GB: He ended up straddling him, 'cause Mr. Moore was partially on his side and on his stomach, and so he was partially straddling him.
- BN: What do you mean when you say straddle?
- GB: Leg over over Mr. Moore and the other leg on the opposite side of Mr. Moore.
- LS: Is he standing or kneeling?
- GB: No, he's kneeling on the mattress.
- LS: And what part of Xavier's body is Officer Tu straddling over?
- GB: I believe it's basically down by the hip area.
- BN: How soon after the other officers arrived once you all fell onto the mattress and, you said, you called for assistance?
- GB: Probably like a minute or two. I suspect, it seemed like it took forever, and I would suspect it was a short time.
- LS: I don't have the handcuffing general order, but are you familiar with it?
- GB: Yes yes.
- LS: And I also have General Order U2 Use of Force if you're familiar (inaudible).
- GB: Yeah.
- LS: And are you also familiar with general order oh this is Training and Information Bulletin 2347 In-Custody Deaths?
- GB: Yes.
- LS: And my next question would be if you want to describe any training you have as it relates to proper police techniques for using non-lethal force, for example handcuffing, taking people into custody, (inaudible) a combative person. You previously provided some information about that; is there anything else that you want to add on that topic about your training and experience on?
- GB: No.

- LS: Are you familiar with something called Positional Asphyxia?
- GB: Yes.
- LS: And what's your understanding of this?
- GB: Basically you want to make sure you have the individual in a position where it does not constrict his or her breathing, so normally if we feel that that there's a possibility that there's a problem with the breathing, the individual is on his placed on the side. Or if it's not a combative situation he or she is in a seated position.
- LS: Have you been trained with regard to this this issue of Positional Asphyxia have you been trained on any actions to avoid Positional Asphyxia? Like, have you been trained on that there are certain actions that you should avoid, so that you don't cause Positional Asphyxia?
- GB: Well, with regards to the training at if I remember correctly it spoke about if there was an expecting mother, you certainly wouldn't prone her on her stomach. If a person appears to be having difficulty breathing or something to that effect, you would not position him or her on, on it, the stomach.
- LS: Okay. How is someone being positioned prone and how does that come into play in the issue of Positional Asphyxia?
- GB: I'm sorry.
- LS: Let me rephrase. When we say prone that means someone is positioned how?
- GB: Down on his stomach.
- LS: Is there any consideration given to how long a person should be left in a prone position?
- GB: Depending on that individual, but we try not to leave anyone in a prone position for very long -
- LS: Okay.
- GB: once they're in cuffs we sit them up.
- LS: Is there anything about someone being in a prone position and having any kind of pressure applied to their back that you that comes into mind for you as something to avoid?
- GB: I'm sorry, with regards to –
- LS: Let me just let me (inaudible). I'm just going to refer directly to the Training Information Bulletin Sudden in-custody deaths it mentions placing restrained persons in a face-down proned position for long periods of time should be avoided. Never leave a restrained person in a face-down prone position without constantly monitoring his/her vital signs. Are you familiar with that -

- GB: Yes.
- LS: as a training factor?
- GB: Yes.
- LS: And then it also mentions a person lying on his/her stomach has trouble breathing when pressure is applied to the back.
- GB: Yes.
- LS: Are you familiar with have you been trained on whether or not you should apply pressure on someone's back when they're in a prone position?
- GB: Depending on the situation.
- LS: And describe, you know, how depending on the situation is a factor for you to consider?
- GB: In terms of applying or not applying?
- LS: Both.
- GB: Well, if you're if I'm taking that person into custody and I'm putting him or her in a control hold, some of the holds may require that you apply pressure until you get that person's wrist in the handcuffs. At that point you roll them over and sit them up.
- LS: Okay. So once you get them into cuffs you would roll them over?
- GB: Absolutely.
- LS: So at some point are you and Officer Tu able to get handcuffs on, Xavier Moore, both hands?
- GB: Not until the other officers came to assist.
- LS: And at some point that happens?
- GB: Yes.
- LS: And do you remember how many handcuffs were used?
- GB: Two sets.
- LS: And why is that?
- GB: Because Mr. Xavier is a large individual we would not have been able to get one set of cuffs on him.
- LS: So after are the cuffs put on the arms to the back or arms to the front?

- GB: To the back.
- LS: And when handcuffs are put on how is Xavier positioned at that point?
- GB: When the cuffs are on him, he's partially on his stomach, partially on his side.
- LS: Okay, and what is he doing after the cuffs are put on?
- GB: He's kicking, bucking; he's still –
- LS: What was the second one?
- GB: Bucking.
- LS: Okay.
- GB: He's still being very, very combative.
- LS: And what how is Officer Tu positioned at that point?
- GB: I believe he still straddled him.
- LS: After the handcuffs were put on, both of the hands, was Xavier compliant?
- GB: No.
- LS: How was (inaudible).
- GB: Still kicking, bucking.
- LS: When you say bucking, what do you mean by that?
- GB: In terms of he's doing he's bucking; he's trying to get, get I would assume Officer Tu off of him, and he's kicking and just squirming.
- LS: Are any portions of the body like raising up from the bed?
- GB: Yes.
- LS: During this time where is Xavier's face positioned in relation to the mattress?
- GB: I don't recall. When he's bucking up his head is off the mattress. I do know that.
- LS: After the handcuffs are put on where are you positioned as this is ongoing?
- GB: I'm still on the same side of him that I was in on when we fell onto the mattress.
- LS: And what part of the body?
- GB: Closer up by the shoulder blades.

LS: Okay.

BN: How would you describe the mattress, was it soft, hard, medium?

GB: Soft.

BN: Thank you.

LS: And are you engaging in any further application of force to Xavier's body as this is ongoing?

GB: When he's in the cuffs or –

LS: Yes.

GB: - out of the cuffs – I'm holding him.

LS: Where are you holding?

GB: The shoulder blades.

LS: And can you just really specifically describe where you're holding, how are you holding, and with what?

GB: With my hands I'm holding him across the shoulder blades.

LS: And are you at the head end facing towards Xavier's feet – or –

GB: No.

LS: - are you on the side?

GB: I'm on the side of him. My head and his head or in the same direction.

LS: Okay. So if Xavier is proned, you are on which side, the right or the left?

GB: Okay - he wasn't proned; he was partially on his side, so he was here and I'm on this side of him. So that would be his left side.

LS: Okay. And are you looking upwards toward his head?

GB: Yes.

LS: And your hands are placed where?

GB: On the shoulder blades.

LS: Okay.

GB: I'm behind him.

- LS: And can you describe what, like, how your hands are positioned and what they're doing?
- GB: They're flat -
- LS: Okay.
- GB: on the shoulder blades.
- LS: And how much pressure, if any, are you using?
- GB: Not very much pressure.
- LS: Okay. And what's the reasoning for why you put your hands there and why you were doing that?
- GB: Because he's still bucking.
- LS: Okay. And at any time did you use anything other than your hands like a knee or foot?
- GB: No.
- BN: At any time did he kick you or Officer Tu?
- GB: I don't know if he kicked Officer Tu, but he did not kick me because I was behind him.
- BN: Did you suffer any injuries in your physical contact with him?
- GB: I am I hyper-extended my thumb. My shoulder was sore and my forearm was swollen.
- LS: Do you know you mentioned your forearm was swollen did you have any contact with your forearm or were you using it in any way?
- GB: Not that I'm aware of.
- LS: Okay.
- BN: What was Xavier saying during all this, was he making any statements?
- GB: He when we are on the mattress?
- BN: Yes.
- GB: No, but not that I can recall. He just kept trying to get away almost like a grunting, and we kept saying *Stop resisting*, *stop resisting*.
- BN: So he wasn't making statements. Was he yelling?
- GB: No, not that I can recall.
- BN: Was he complaining about any pain or anything?

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GB: Absolutely not. BN: Okay. LS: So how long does this continue on after the cuffing? GB: How long does what continue? LS: Sorry – Xavier bucking and kicking. GB: For a few minutes because we requested the Wrap. LS: Who requested it? GB: I don't recall which one of us or if it was one of the officers who came to assist us with the Wrap. LS: At some point does the Wrap show up? GB: Yes. LS: Was any part of it applied to Xavier? GB: The ankle strap. LS: And who applied the ankle strap? GB: I don't know who applied it. LS: Did other officers arrive other than you and Tu and Smith? GB: Officer Mathis and Officer Gardner. BN: Were any other parts of the Wrap restraint applied to Mr. Moore? GB: No. BN: And why was that? GB: He was too large. LS: Was Officer Kastmiler there? GB: Kastmiler?

LS: Kastmiler.

GB: I don't know.

LS: With regard to Officer Mathis and Gardner, did you see them – did you see what they were doing when they arrived?

- GB: They were helping us free his arm and when he was when Mr. Moore was kicking I don't know who applied the ankle strap.
- LS: Where were Mathis and Gardner positioned?
- GB: I have no idea.
- LS: At some point was the ankle strap put on?
- GB: Yes.
- LS: Did you see it being put on?
- GB: I don't recall seeing it being it put on but I saw it after it was on.
- LS: Okay. And are you trained on how to put an ankle strap on someone?
- GB: Yes.
- LS: When you saw it on Xavier, was there anything unusual about the way it was put on as you saw it?
- GB: No.
- LS: Was there anything that you saw as being improperly improper that was improperly put on?
- GB: I didn't see it being it put on, but once it was on, I saw nothing that was improper.
- LS: Okay.
- BN: Were there ever attempts to put on other parts of the Wrap on Mr. Moore?
- GB: No.
- LS: I wanted to just clarify something on Page 15 of your interview, line_68. It uses the word, He's kicking and it says, He's balking, B-A-L-K-I-N-G.
- Rep: Balking.
- GB: That's a typo.
- LS: And what's the correct word?
- GB: Bucking, buck, B U C K –
- LS: BUC...
- GB: ING.

LS: Thanks for clarifying that, and then also it's to Page 16, line 678 – I'm sorry, 16 – well, wherever it says B-A-L-K; it's *buck*, B-U-C-K. Is that –

GB: I think that was on this one page -

Rep: Balking is baseball.

LS: I was trying to figure out what that was.

Rep: It's moving toward the batter and not throwing a pitch, getting (inaudible) just like a walk.

BN: It reminds me of -I thought of horses.

Rep: (Inaudible) that's true, too.

LS: Thanks for clarifying that; I think it was a typo in the transcript. Did at any time in your contact with Xavier after trying to take into custody, did you ever hear Xavier make any statements about having any difficulty breathing?

GB: No.

LS: Did you ever hear Xavier make any statements about experiencing medical distress?

GB: No.

BN: Were there any civilians in the apartment during your struggle with Mr. Moore?

GB: Yes.

BN: Who?

GB: I believe Mr. Sterling.

BN: Sterling?

GB: Yes.

BN: Where was he in the apartment?

GB: He was to the rear of me because when I looked back I saw him sitting there.

BN: So, he was to the rear of the mattress – where you all were?

GB: Yes.

BN: Okay. So did it appear to you that he observed the struggle?

GB: Yes.

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- BN: All right.
- LS: How long was he there?
- GB: Apparently he was there when we fell into the apartment; I didn't see him when we fell into the apartment, but during the struggle to get Mr. Moore in cuffs, I saw him.
- BN: And what happened when you saw him?
- GB: I told him to get out.
- BN: Did he leave?
- GB: Immediately.
- BN: Were there any other civilians in the apartment?
- GB: No.
- BN: What was the reason you told Mr. Sterling to leave the apartment?
- GB: I was concerned about officer safety. I didn't know if he was going to get involved in the struggle, and I didn't want him coming up behind me.
- LS: When Officer Tu is straddling Xavier at any time during that observation where are Officer Tu's hands?
- GB: He has one where he's holding that one that we have cuffed -
- LS: Mm-hmm.
- GB: and he's trying to get the other hand free.
- LS: Okay, and eventually when the cuffs are put on –
- GB: Mm-hmm.
- LS: and he remains straddled, is that right?
- GB: No, he gets off of him.
- LS: Okay, so right -
- GB: Yes.
- LS: at the point the handcuffing is achieved -
- GB: He's he's off of him.
- LS: Okay. After the handcuffing is achieved, was there any effort by any of the officers to either completely roll Xavier onto a side or have Xavier sit up?

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- GB: No, because he was still being very combative, kicking and –
- LS: Okay. And at some –
- GB: bucking.
- LS: Bucking. And at some point after the Wrap is put on the ankles, is there any effort made to put Xavier on the side or have Xavier sit up?
- GB: Okay, the Wrap was not applied to his ankles; it was the strap.
- LS: I'm sorry, the strap, thank you.
- GB: And he was still kicking.
- LS: Okay.
- GB: Even with the ankle strap on him.
- LS: Okay.
- GB: He still he's still being very resistant.
- LS: Okay, what's happening after the ankle strap is put on? Describe that.
- GB: He's still trying to kick, he's still bucking, and we're just holding him.
- LS: Okay, and when you say holding, where are you holding?
- GB: The same place. I'm holding him with my hands on his shoulder blade.
- LS: Okay, and then what are the other officers doing? How are they holding?
- GB: I'm concerned about how I'm holding; I'm not I'm not paying attention to exactly I remember Officer Tu, he had his hand when while we were cuffing him, he had he was holding that particular hand trying to get them out. What Officer Mathis and Gardner, I don't know.
- LS: How long -
- BN: So back to the bucking -
- GB: That's okay.
- BN: Mr. Moore was bucking previous to and after the ankle strap was put on. Was his body raising up off the mattress?
- GB: Yes.

- BN: And this was while Officer Tu was straddling him?
- GB: Once the cuffs were on, he wasn't straddling.
- BN: Okay.
- GB: And then he started the kicking.
- BN: Okay. And the bucking?
- GB: And -
- BN: But when you say *bucking* at this point he's partially on his side?
- GB: Yes.
- BN: And, is he like jerking his hip area up?
- GB: He's he's jerking his upper torso.
- BN: Mm-hmm. The upper torso?
- GB: Yes.
- BN: Okay.
- LS: After the Wrap is the ankle restraint is put on you've described some further resistance?
- GB: Yes.
- LS: At some point does that subside?
- GB: While that was going on, we requested BFD to arrive with the restraint because we knew we could not use the Wrap. It was just too small, because he was still resisting.
- LS: When you say restraints, what are you talking about like a board?
- GB: No, they have a their their ankle and I'm sorry, yeah, wrist and ankle restraints where they're they're the same type of restraint used on a gurney. They're leather and they have loops to go through them, and they're actually locked onto the sides of the gurney.
- LS: So after the handcuffs are put on, after the ankle strap is put on, you make someone makes this request?
- GB: Yes.
- LS: Okay. And how is Moore positioned during that time?

- GB: He's still partially on his side and on his partially on his stomach.
- LS: And at some point do you make any observations about Xavier have any difficulty breathing or any kind of health concerns?
- GB: I didn't see any observations of difficulty breathing, but I noticed that I did not see his chest moving.
- LS: And how is Xavier positioned at that time?
- GB: Still the same way, partially on his stomach, partially on his side.
- LS: And how did you notice that?
- GB: Because I'm up at his head now.
- LS: Are you looking at the chest rising or –
- GB: I'm looking at his chest.
- LS: And it doesn't it's not rising up and down or –
- GB: I didn't see it moving and at that point I believe I said, *I don't think he's breathing*, and we turned him completely on his side, and then I could see his chest moving up and down, and then I saw him move his head like this.
- LS: Okay, when you say like this, moving his head, what do you mean?
- GB: He just did his head like this.
- BN: If you can describe it –
- GB: From side –
- BN: for the recorder.
- GB: Oh I'm sorry. Moved his head from side to side.
- BN: Side-to-side, okay.
- LS: You mentioned moving Xavier from partially on the side to completely on the side?
- GB: Yes.
- LS: Okay.
- BN: What was his breathing like before you noticed that he'd stopped breathing? During the struggle did you notice anything unusual about his breathing?
- GB: Not that would indicate that there was a problem. It's just someone is struggling with the police. I think we were probably breathing like he was.

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- LS: When you say breathing like he was, what do you mean by that?
- GB: Just that the type of breathing you would do when you are in a in a struggle.
- LS: Which is, what kind?
- GB: Just basically basic breathing when you are in struggle.
- LS: So what is the very first moment when you noticed any potential issues with Xavier's breathing?
- GB: Well, I noticed I did not see his chest moving, and at that point I told them "I don't think he's breathing," and we turned him to his side –
- LS: Okay.
- GB: completely on his side. And then I could see the chest moving back-and-forth, and at that point he moved his head from side-to-side.
- LS: How long after the ankle restraint was put on and Moore is on, partially on the side before you moved completely onto the side? How much time is Moore in that position?
- GB: I'm sorry, you said I moved completely to the side?
- LS: Let me rephrase it. So after the ankle wrap the ankle restraints are put on –
- GB: Okay.
- LS: Moore is positioned partially on the side.
- GB: Yes.
- LS: How much time does Moore spend in that position before being moved completely onto the side?
- GB: Not very long.
- LS: And was there any reason why Moore was not just initially put completely on the side? Why Moore spends time in sort of this, you know, partial position?
- GB: Because he's still resisting.
- LS: Okay. And how many officers did it take to reposition Moore completely onto the side?
- Rep: Do you need a break? How are you doing?
- GB: I'm good.
- Rep: Okay.

- GB: I don't know if two or three officers came to assist at that point, but all the officers that were there helped get him to the side.
- LS: Okay. And then after you noticed again that the chest seemed to be moving, you then noticed Moore appeared to be breathing?
- GB: Yes.
- LS: Did you make any effort to check Moore's pulse?
- GB: I checked his carotid and I felt a pulse.
- LS: And when was the first time that you did that?
- GB: I believe when I did not see his chest moving, I checked for a pulse; we repositioned him; and I saw the chest moving up-and-down; and I checked for a pulse. He had a pulse.
- LS: Okay.
- GB: I think I could use a bathroom break.
- Rep: You're entitled to it under the law.
- LS: Yeah.
- GB: Okay.
- LS: We'll go off the record. It's 8 minutes to 6.

RECORDING BREAK

- LS: And we're back on the record. It's September 18th. It's 4 minutes to 6. Officer Brown is present with her attorney, Mr. Stern. And I'm here, PRC Officer Simpson, and Investigator Byron Norris. So, I'm just gonna keep going. I don't have much more. So, after Moore is moved completely onto the side, did you have occasion to notice any change in breathing?
- GB: Yes, about a minute later I didn't see his chest rising again and I told them, "I don't think he's breathing," I checked his carotid and I didn't feel a pulse, and I told them, "He's not breathing. He's not breathing." At that point, we got him out of the cuffs, pulled him onto the floor and Officer Tu started CPR.
- LS: How was Moore positioned while this is going on? Was Moore changed to a different position from the side from being on the side?
- GB: He was prone on his back.
- LS: Moved to the back –

Case #2327 Officer Brown

Transcribed by MGM 10-11-13 Reviewed by BN 10.22.13

- GB: Yes.
- LS: His back.
- GB: Yes.
- LS: And you mentioned the cuffs were removed.
- GB: Yes.
- LS: Okay. And do you know if what the status was of the ankle strap?
- GB: I don't know.
- LS: And was there any reason prior to noticing Moore was not breathing, was there any reason why Moore was not put in a seated position?
- GB: I'm sorry.
- LS: Was there any reason before Moore stopped breathing, that you observed stopped breathing was there any reason why Moore was not put in an upright seated position?
- GB: No.
- LS: Would you have been able to have Moore be in an upright seated position?
- GB: Would we from the mattress? With his ankles? Probably, I would have to speculate that we didn't want him to start his resisting again.
- LS: Okay. I just have a couple touch-up questions about a few things.
- BN: How high was the mattress from the floor?
- GB: It's just a twin mattress.
- BN: And was the mattress sitting on the floor?
- GB: Yes.
- LS: When a person is both arrested on a criminal matter and 5150'd, where do they go first?
- GB: It depends. BFD usually will respond if he's going to be 5150'd because he has to have a medical clearance.
- LS: Okay.
- GB: If he's at the jail at the time, then BFD is called to the jail to evaluate. If he may have gone in on a criminal matter and then end up being transported out on a 5150.

- LS: So if you make a determination at the scene of someone's residence, that you're going to both arrest him criminally and 5150 them, where would they naturally where would they go first?
- GB: It all depends. If BFD is on scene now if I'm taking a man for a criminal matter, I'm going to transport him to the jail. At that point I will call for BFD to come in and do an evaluation.
- LS: Okay.
- GB: Medical evaluation for 5150.
- LS: Now I think I've observed in the 5150 general order there's something about you can place a police hold on someone that's being evaluated at a hospital?
- GB: Yes.
- LS: Describe how does that work? Why would you do that?
- GB: If someone has some type of injury and they sustained it as a result of their criminal activity, they go in for that medical, but if it also if we also have enough evidence that that person is meets the criteria of being 5150'd, that way once the medical situation is in hand, that individual can't walk out of the police, I mean walk out of the hospital. He's placed on a 5150 hold.
- LS: Okay, so when you arrest Xavier on a warrant and you say We're going to go down to the station to get this cleared up, is it what's your mindset with regard to where Xavier is going to the station or to the hospital?
- GB: Initially, we were just trying to get him into cuffs. We were going to have my my position was I wanted to get him into cuffs and then I could call for BFD.
- LS: Okay. And did you ever execute one of these forms, a PRC6, this application for emergencies, psychiatric attention?
- GB: No.
- LS: Why did you not fill this out?
- GB: I never had a chance to.
- LS: Okay. And the advisement that we talked about that you did not give that we read earlier off this form, was there any particular reason why you did not give that advisement?
- GB: I did not 5150 him.
- LS: And why was that?
- GB: I did not have a chance to.

 LS: Okay, why didn't you have a chance to?

GB: Because I was engaged in a struggle with him.

LS: Okay, if I can just check my notes.

GB: Sure.

LS: Do you have any questions Byron – Mr. Norris?

Rep: I do. Do you want me to go ahead or would you rather –

LS: Yes, please, oh please go ahead.

Rep: Okay.

LS: I was going (inaudible).

Rep: Now ultimately did you learn the status of Xavier Moore's warrant?

GB: Yes.

Rep: What was that?

GB: He did have an active warrant out of San Francisco.

Rep: Okay, and is it unusual, and, I'm speaking generally not about the specifics for this case, is it usual for people to lie about their names to the police for example?

GB: Yes.

Rep: Give fake dates of birth?

GB: Yes.

Rep: All kinds of information particularly if they do have a warrant?

GB: Yes.

Rep: Okay, and there are a number of ways to confirm people's identity while during a warrant check, right?

GB: That's correct.

Rep: And a lot of those can be done from the police car either with the mobile terminal or police radio -

GB: Yes.

Rep: - is that right? And when you're taking somebody into custody for a warrant, there's only one actual positive way to identify their identity to confirm their identity and that's through fingerprints, right?

GB: Yes.

Rep: Because you don't know exactly who you have even if you have a confirmed warrant until they've been fingerprinted and those fingerprints would match with the records on file.

GB: That's correct.

Rep: That's common for people all the way up to the jail to give – continue to give false information until it's been confirmed by fingerprints in the computer system.

GB: Yes.

Rep: Okay. So you assumed that Officer Smith was doing some of those checks when he was back at his car after leaving the apartment or after leaving the entry way to the apartment building?

GB: Yes.

Rep: Were there any other reasons that you might not have found it surprising or shocked that the person you knew as Xavier Moore might have warrants?

GB: No.

Rep: Okay, I mean, his roommate had described him as a drug user, correct?

GB: Yes.

Rep: His mother told you when she was speaking to you on the phone about the prior incident that he had run-ins with the law, drug use, and incarceration for other things?

GB: Yes.

Rep: Okay, so would it have been surprising if he had a warrant to you, I mean, would that have been something that was a great shock?

GB: No.

Rep: And you knew that he was recently moved from San Francisco -

GB: Yes.

Rep: - to Berkeley and that the person with the warrant - the warrant was out of San Francisco.

GB: Yes.

Rep: All right. Let's talk about the timing of informing people what their charges are, what they're being arrested for. You don't do that prior to them being placed in cuffs, correct?

GB: No.

Rep: Why not?

GB: Because (inaudible) will resist many times.

Rep: Okay, and why do you place people in handcuffs?

GB: For their safety and for our safety, the officers' safety.

Rep: Whether or not you place them in handcuffs doesn't determine that a detention has become an arrest, right? Handcuffs can come off?

GB: That's correct.

Rep: Okay, do you sometimes detain people in handcuffs for your safety until you determine their identify or what if any crimes have been committed or not committed?

GB: Yes.

Rep: Okay, and as to 5150, welfare and institution commitments, do you always handcuff people when you're transporting them?

GB: Yes.

Rep: Why is that?

GB: Again, for their safety and - and for mine.

Rep: Let's talk about the specific criteria that peace officers are authorized to take people into custody for purposes of 5150, the Welfare Institution Code. They can be users of narcotics or restricted drugs, right?

GB: Yes.

Rep: Dangers to him or herself, right?

GB: Yes.

Rep: Danger to others, right?

GB: Yes.

Rep: Or gravely disabled?

GB: Yes.

Rep: Ms. Moore or Mr. Moore was having delusions, right?

GB: That was my impression.

Rep: He was saying things that appeared to reflect an irrational conscious state?

GB: Yes.

Rep: He's seeing people that weren't there, right?

GB: Yes.

Rep: Kicked out his roommate because he wouldn't give him drugs or money for drugs?

GB: Yes.

Rep: Okay, and so, first of all in the first criteria he was inebriated because of the use of narcotics, possibly?

GB: Yes.

Rep: Okay, I mean you're not a qualified expert it sounds like for purposes of Health and Safety Code 11550, but certainly that was at issue, correct?

GB: Yes.

Rep: He could've been a danger to himself, right?

GB: Yes.

Rep: Certainly a danger to others because of his actions with the roommate and then with you, right?

GB: Yes.

Rep: And also gravely disabled because he didn't appear to be in touch with reality at least as he presented to you.

GB: Yes.

Rep: The phrase *face down* was used a lot with respect to the training and information bulleting about sudden in-custody death, do you recall that phrase?

GB: Yes.

Rep: Was Mr. Moore or Ms. Moore, as far as you remember, was his face actually ever down in the mattress when you were struggling with him?

GB: I don't recall his face being down in the mattress.

Rep: Okay, what do you recall if anything?

GB: I know when he is partially on his side and partially on his stomach his head was facing the wall.

Rep: Okay – in terms of taking people into custody when they're struggling, are you trained as a police officer to prone them down?

GB: Yes.

Rep: Why is that?

GB: We – we get better control of them. We can reduce their – their movement.

Rep: Back briefly to the warrant issue, from the police car - can you perform record management checks of your system, your local system?

GB: Yes.

Rep: And can that potentially provide information that would, for example, correlate an address to a name, to a date of birth, even in the absence of someone telling you their accurate identifying information?

GB: Yes.

Rep: You can even obtain pictures nowadays in a police car, right?

GB: Yes.

Rep: Do you think it's reasonable for you to assume that Officer Smith was doing any or all of those actions?

GB: Yes.

Rep: With respect to 5150 training, you have a block of training concerning that in the Police Academy, a learning domain, right?

GB: Yes.

Rep: Okay, Berkeley is a place with quite a few people with emotional disorders, is that fair to say?

GB: Yes.

Rep: Okay, it's not uncommon for you as a patrol officer to deal with people with mental health issues even those that present symptoms that rise to a level of being involuntarily committed for signs of 5150, is that fair to say?

GB: Yes.

Rep: Do you train on 5150 evaluations in the field training program?

GB: I believe we did.

Rep: In your training and experience is it proper to detain someone in handcuffs if you believe they have a warrant, so that can be either confirmed or not?

GB: Yes.

Rep: And to be clear, Mr. or Ms. Moore wasn't cooperative and tried to resist your attempts to gather further information or take him or her into custody, right?

GB: Yes, to take him into custody.

Rep: As to the question of Xavier or Kayla Moore's gender identity, did that play any role whatsoever in how you handled this call?

GB: No.

Rep: I don't have any other questions, thank you.

LS: That concludes our interview.

BN: Officer Brown, do you have anything to add that we haven't asked you?

GB: No.

BN: All right.

Rep: Do you want to tell them how great I was in the Police Academy?

BN: Off the record?

Rep: (Laugh).

LS: I'm going to turn this off. The time is 6:12. Thank you for your time today Officer Brown.

STATEMENT OF OFFICER TU PRC COMPLAINT #2327

- LS: Lucinda Simpson, PRC Officer
- KT: Officer Tu, Subject Officer
- HS: Harry Stern, Legal Rep.
- LS: All right, good evening, I'm PRC Officer Lucinda Simpson. Today's date is October 17, 2013. It's about five minutes after 6:00 p.m. I'm here with Officer Tu and you are badge #38, is that correct?
- KT: Correct.
- LS: And also present is Officer Tu's Counsel, Mr. Harry Stern. Officer Tu is a subject officer on complaint #2327. Officer Tu, you are here under the provisions and protections of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights. Pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Tu and Mr. Stern are you aware this interview is being recorded?

- HS: Yes.
- KT: I am.
- LS: And Officer Tu, would you answer the questions today truthfully and to the best of your ability?
- KT: Yes.
- LS: So you are employed as a police officer with Berkeley Police Department, is that right?
- KT: Yes.
- LS: And how long have you been so employed?
- KT: A little over six years now.
- LS: Okay. And can you just briefly describe some of the assignments and positions that you've had or that you've worked in over your career?
- KT: My entire career I've been on patrol.
- LS: And any prior experience before being an officer of Berkeley?
- KT: No.

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LS: Okay. Were you working on patrol on February 12, 2013 just before midnight?

KT: Yes.

LS: And are you familiar with something called the Crisis Intervention Team?

KT: Yes.

LS: Do you know what that is? Can you just describe what it is?

KT: My understanding it's – it's a team of officers who are trained in dealing with specific mental health issues.

LS: Okay, and if I can direct your attention to – I'm going to show you General Order C-66. Are you familiar with that general order?

KT: Fairly.

LS: And when did you become aware of it, you know, coming into being, if you will?

KT: Early this year I remember the general order coming out.

LS: How were you made aware of it?

KT: We have a department email of new general orders.

LS: Okay, and they just would attach it and send it to you?

KT: Correct.

LS: Do you remember attending any kind of a specific briefing or training on this particular general order?

KT: I don't recall that.

LS: And with regard to you learning about it, possibly through an email, do you know if that was before February 12th of this year?

KT: Yes.

LS: As of February 12 earlier this year, were you yourself a member of the Crisis Intervention Team?

KT: No.

LS: You had had no special training in crisis intervention for mental health?

KT: No.

LS: And what team were you working at that time?

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KT: Team 4. LS: And was there a Team 3 as well? KT: Yes. LS: The incident that we're going to talk about this evening, was that part of your beat – KT: No. LS: - at that time? It was not? KT: No. And whose beat or team was that – did that fall under? LS: KT: LS:

That falls under Beat 4.

And you were in Beat 4 at that time?

KT: I was assigned to Beat 3.

LS: Okay. Were you -

I think the confusion was team versus beat – maybe. Rep:

LS: Okay.

Beat 4 is assigned to Team 3 and my beat, Beat 3, is assigned to Team 4, if that helps. KT:

So, were you familiar with all the officers that would be involved in your beat and the LS: teams you would work with?

KT: Yes.

Did you have any knowledge as of February of earlier this year which, if any, were CIT LS: trained?

As far as I know, we had no CIT trained officers on duty. KT:

LS: At that – that time?

KT: At that time.

Okay. And I also want to just ask you are you familiar with the General Order U2 - Use LS: of Force?

KT: Yes.

LS: Okay, and are you also familiar with Training Information Bulletin - Sudden In-Custody Deaths?

Case #2327 Officer Tu

Transcribed by MGM 10,28.13 Reviewed by BN 10.29.13 KT: Yes.

LS: And can you just describe any training that you have regarding proper police techniques for using non-lethal force, like physically taking someone into custody, physically restraining a combative person?

KT: We have extensive training, annual training on use of force, whether it be ground fighting or just lectures.

LS: Okay. And then same question with regard to the topic of Sudden In-Custody Deaths, any training that you've received on that subject?

KT: Not that I can recall.

LS: Okay. Are you familiar with something called Positional Asphyxia?

KT: Yes.

LS: Can you describe what that means to you?

KT: Positional Asphyxia is when an individual is placed in a position that causes stress on his or her breathing and a person can die from that.

LS: And have you received any, you know, training or information about how to avoid Positional Asphyxia?

KT: Yes.

LS: Can you describe that?

KT: In academy training and in some of our ground fighting, hand-to-hand fighting, arrest and detention training, we learn about how to prevent that -

LS: Okay.

KT: - position of rest.

LS: Can you tell me what you learned?

KT: Sure, once a subject has been secured the best thing to do is place him on their side with their face free.

LS: Okay. And had you been trained on any specific things to avoid doing?

KT: Putting a subject face down, applying direct pressure to the middle of the back upper body to the face.

LS: Okay. So if we can just go back to February 12th of this year, just before midnight, did you happen to get a call from Dispatch?

- KT: Yes.
- LS: Okay, can you tell me what you heard what you learned of?
- KT: A call was broadcast about a disturbance between roommates or a call one roommate described having a I believe paranoid, schizophrenic roommate who had gotten into an argument with him and kicked him out of the apartment.
- LS: Okay. Were you did you voluntarily attach yourself to the call?
- KT: I did.
- LS: What does that mean exactly?
- KT: I I was not one of the original dispatched officers. Officer Brown was before and Officer Smith, who I believe at the time was five, were originally dispatched.
- LS: Okay.
- KT: I added myself for a couple of reasons; first, because typically Beat 3 covers Beat 4 and so I it's part of my responsibility to Cover 4, and second, sometimes roommate situations can get pretty volatile and so I wanted to make sure that they had enough cover to make sure the situation would be handled safely.
- LS: Okay. And did you have occasion to arrive at an address on Allston Way?
- KT: 2116 Allston, yes.
- LS: And were any other officers there when you first got there?
- KT: Officer I arrived on scene with Officer Brown, and Officer Smith arrived right after us.
- LS: All three of you in separate cars.
- KT: Yes.
- LS: And did you do anything outside when you first got there?
- KT: Did I do anything outside?
- LS: Or, what happened when you got to the location when you first got there?
- KT: Oh when we first got there we waited to try and contact the reporting party.
- LS: Okay.
- KT: We didn't know where he was initially.
- LS: Eventually were you able to make contact with someone?

- KT: Yes, he walked up to us.
- LS: Was that Mr. Haves?
- KT: Yes.
- LS: And this contact is outside the building?
- KT: Outside the building on the sidewalk.
- LS: And who's making contact with Hayes?
- KT: Officer Brown.
- LS: And where are you?
- KT: I'm standing a couple feet away from Officer Brown.
- LS: And can you just describe the relationship of like whose role is what at the scene that you know when you first get there?
- KT: So the roles are, since it's before call, before it's the handling officer, and then me and Officer Smith are the cover officers. (Inaudible).
- LS: Okay, and who is the handling officer?
- KT: Officer Brown.
- LS: Okay, so what are the roles of a handling officer versus a cover officer?
- KT: A handling officer will typically direct other, the supporting officers, the cover officers, with tasks. They can make contact with the victims or reporting parties or what not to figure out what needs to be done. And most of the primary-decision making as how the call will be handled will go through the handling officer.
- LS: Did you observe any conversation with Brown and Mr. Hayes?
- KT: I did.
- LS: Can you describe what they talked about?
- KT: I wasn't really listening too much. I knew they were talking, but I can't recall the conversation.
- LS: Okay. And where is Officer Smith while this conversation is going on?
- KT: He's standing with us.
- LS: Okay. At any point did you see Officer Smith going back-and-forth to his vehicle?

- KT: Back and forth to his vehicle?
- LS: Or even one time that you saw.
- KT: I remember him; he was in his vehicle for a minute before coming out to join us.
- LS: And then you're standing there with Officer Brown and Mr. Hayes, and then where is Officer Smith in relation to all of you people?
- KT: He was right around us; I can't say where exactly he was, but he was –
- LS: Okay.
- KT: present.
- LS: Okay. After the conversation with Mr. Hayes let me rephrase this at any time when you are outside the apartment, after you first got there, did you hear any conversation between Officer Smith and Officer Brown?
- KT: Yes.
- LS: Can you describe what you heard?
- KT: Well, briefly, before Mr. Hayes approached and we're still trying to find Mr. Hayes, the three of us were standing there. I remember Officer Smith saying he was checking the names of the subjects involved in the call, and he found a warrant out of San Francisco; I don't remember what for, but it was for the same name as the roommate Mr. Hayes was describing, with the same physical descriptors. The difference was there was a difference in the birthday, but everything else seemed to match, and Officer Brown said she was familiar or knew that Mr. Moore frequented San Francisco or perhaps lived in San Francisco at one point.
- LS: Okay. Was this all part of one continuous conversation or how was that conversation unfolding?
- KT: It was kind of a brief conversation we had right after we arrived on scene to when Mr. Hayes walked up to contact us.
- LS: Did you hear officers make any statements about, you know, going back to get more information or to check any more information about the date of birth?
- KT: I don't recall.
- LS: Did Officer Smith make any statements to Officer Brown about whether he'd confirm a warrant?
- KT: I don't recall.
- LS: And specifically, what did he say about a deviation in the date of birth for Moore?

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Transcribed by MGM 10.28.13 Reviewed by BN 10.29.13

- KT: Again, I don't remember the specifics; I just remember there was a difference.
- LS: Did you hear Officer Brown give any further instructions to Officer Smith like, you know, *Go check this out* or *Go look into this date of birth*, anything like that?
- KT: I can't remember that, sorry.
- LS: So when a person is suspected of having a warrant, what kind of identifying information do you use to determine if it's the correct person that you're going to be arresting?
- KT: Well, name, birthday, physical descriptors, driver's license numbers, arrest numbers, arrest history numbers, things like that.
- LS: Is that a list where, you know, anyone of them you could use or would you use all of them?
- KT: We use what's available. We can use a combination.
- LS: Do you have a device in your patrol vehicle called I think it's called an MDT?
- KT: Yes.
- LS: And, remind me what that stands for, mobile something.
- KT: It's basically a computer we use to pull up calls and (inaudible).
- LS: Are you familiar with something called Cal-Photo?
- KT: Yes.
- LS: Do you have Cal-Photo in your vehicles?
- KT: I don't think I have some of them do, but I'm I'm not sure if all of them do.
- LS: Okay. You feel that some of them do?
- KT: I know some vehicles do have it, yeah.
- LS: In Berkeley PD?
- KT: Yes.
- LS: Okay. Can you describe what Cal-photo is?
- KT: It's the DMV it's a website where we can go and access DMV photographs.
- LS: Is that done through dispatch or do you access the website directly?
- KT: We can access the website directly if we have a valid password and login information.

- LS: Okay, what kind of information can you get off of Cal-photo?
- KT: Basically what we can do is if we have access to a driver's license number and then we can pull up a DMV photograph.
- LS: Do you need a license number or can you just run by name?
- KT: You need the license number.
- LS: Is there any way that you a person could run inquiries in their car mobily to find out what someone's date of birth is?
- KT: Yes.
- LS: How would they do that?
- KT: If you check through, you know, do a DMV records check or a I think through CLET through a computer system, you can. If you run a name sometimes you can find the correct birthdays.
- LS: All right, at some point do you proceed up to a particular apartment?
- KT: Yes.
- LS: And did someone open the door?
- KT: Mr. Hayes opened the door.
- LS: And was it you and Officer Brown and Officer Smith that went up there?
- KT: Yes.
- LS: All right. And which officer made the first contact when the door was opened?
- KT: Officer Brown.
- LS: And what did she do?
- KT: Called into the apartment to speak to I think she said Xavier, (inaudible) first name.
- LS: Okay, and did someone come to the door?
- KT: Moore came to the door.
- LS: And the person that came to the door is that someone that you later found out was named Xavier Moore?
- KT: Yes.
- LS: And for purposes of just this interview today only, would it be alright if I refer to Xavier Moore as Ms. Moore?

Case #2327 Officer Tu

Transcribed by MGM 10.28.13 Reviewed by BN 10.29.13 KT: Okay.

LS: How far away were you positioned from Ms. Moore and Officer Brown when they're making contact initially?

KT: I think I was about 5-6 feet away.

LS: And where's Officer Smith in relation to all of you?

KT: I don't remember.

LS: What did Officer Brown say to Ms. Moore?

KT: I don't remember too much what she was saying. I was a little distance away. It's a big apartment complex, big open courtyard. It's kind of a private conversation – you don't want – you don't want everyone to know everybody's business, so I know they were talking about – I know – I know Officer Brown was trying to settle the dispute between – between Hayes and Moore, but I don't remember any specifics of the conversation.

LS: Could you describe Ms. Moore's demeanor during the conversation?

KT: Ms. Moore was – was making some weird statements about – I know Ms. – Ms. Moore kept referencing the FBI, she said she was being followed by the FBI, saying things like that. Ms. Moore was just twitching pretty hard like making fast jerky movements with the head and arms, kind of moving her arms back and forth. That's pretty much what I can remember right now.

LS: Okay. Would it refresh your memory at all if you refer to your earlier statement that you did?

KT: Sure.

LS: Okay. I have a copy here. I'll direct you to – let's see here – I usually have a reference note and I don't have one for this, bear with me please. I want to ask you just sort of general questions to see if it triggers your memory at all. And also let me look at your report here too. It's in your report, that's why – if I can refer to the third paragraph on the first page of your report if you could review that paragraph and let me know if it refreshes your memory about any statements that Ms. Moore was making.

KT: Okay. That's right. Here they're talking about how – yeah – Moore – Moore was also making comments about, saying we're not – she didn't think we were real police officers.

LS: In your report you reported that Moore made paranoid rambling statements, is that correct?

KT: Yes.

LS: Do you recall what you meant by that?

- KT: At this time I can't remem I mean it's how many months later I don't remember specific words. I just remember some things that Moore was saying just weren't making any sense.
- LS: Okay. Do you have any training and experience identifying people who are under the influence of controlled substances under Health and Safety Code section 11550?
- KT: Am I D-R-E or 11550 qualified no.
- LS: Aside from being qualified, do you have any training or experience –
- KT: Yes.
- LS: in identifying people under the influence?
- KT: Yes.
- LS: Can you just describe that experience or training?
- KT: In the course of my career as a police officer I've encountered numerous people who are under the influence of controlled substances.
- LS: Such as which ones?
- KT: Cocaine, methamphetamines, PCP.
- LS: How many such contacts would you say you've had?
- KT: I can't say numerous.
- LS: And in those contacts have you become aware of whether the people were in fact confirmed to be under the influence of a suspected drug like via a lab report?
- KT: Not via a lab report. I never arrested anyone for 11550 if that's what you're asking.
- LS: Okay. So you didn't do an actual arrest that followed through to where you were able to confirm or dispel your initial –
- KT: Correct.
- LS: suspicions. Do you have any opinion or observation with regard to whether Ms. Moore appeared to be under the influence of any controlled substances on the day that we're talking about?
- KT: I believe Moore might have.
- LS: And what do you base that on?
- KT: It just you know specifically the twitching motions you see that sometimes with narcotics usage.

LS: I think you had been asked that question earlier during your interview in the criminal case, do you recall that?

KT: No, I don't.

LS: Okay, would it refresh your memory if I –

KT: Yes.

LS: - showed you? It's on page 27. I'll direct you to Lines 1168 to 1176. 1168 starts at the top.

KT: I'm sorry, how far did you want me to review down to?

LS: To Line 1176.

KT: 1176 – oh, 1168 to 1176.

LS: Yeah.

KT: Okay.

LS: Does that refresh your memory at all?

KT: Umm -

LS: About being asked about being under the influence of a narcotic or alcohol?

KT: That - yes, I do remember being asked that now.

LS: Okay.

KT: I think I answered the same way.

LS: Okay, so I just wanted to clarify on Line 1173 you were asked "Would you describe Moore as being under the influence of some type of narcotic substance?" and you answered, "Appeared to be Yes."

KT: Okay.

LS: Is that accurate?

KT: If that's what I said at the time then yes that should be accurate.

LS: Okay, so what I wanted to get clarification from you on was when you made that statement - was that based on observations only at the door or all together the entire incident?

KT: I would say throughout the incident.

LS: Okay.

KT: But I mean if you're asking specifically at the door, what I'm thinking of now is my contact at the door and to me - yes at the door - they appeared to be under - they might have been under the influence of narcotic.

LS: Okay, did you yourself undertake any actions to confirm or dispel that?

KT: No.

LS: Why not?

KT: It was kind of secondary at that point.

LS: Secondary to?

KT: Solving the problem on hand of the roommate dispute.

LS: Whose role would it have been to look into that at the scene?

KT: If Officer Brown wanted to go that route then she would've made that decision.

LS: So as the three of you are still there at the door with Ms. Moore, were any people identified at that time?

KT: I believe just Moore and Hayes.

LS: And when I say identify, what does that mean?

KT: By identify I think - (phone rings) - okay

LS: I'm sorry. I usually turn my phone off.

KT: That's fine.

LS: When people are identified at a scene, what does that mean?

KT: Usually what happens is they either give ID or verbally ID them by asking for a name, birthday, those type of things.

LS: Okay, so did that happen in this matter?

KT: Yes.

LS: Can you describe what happened?

KT: I know they were ID'd. I don't know if it was verbally or by physical ID -

LS: Okay.

KT: - but I know they were.

LS: And how do you know that?

KT: Because I know – I know the information was passed to Officer Smith who began records check.

LS: And when you say information is passed, what do you mean passed?

KT: Usually when we identify people we write that information down on a card.

LS: Okay. And who was the person who obtained the identification?

KT: I don't know.

LS: Who did you see passing something to Officer Smith?

KT: Officer Brown.

LS: Are you familiar with something called a *field identification card*?

KT: Yes.

LS: What is that?

KT: Is the FI card; it's the card I described where we write identifying information down of a subject.

LS: And what kind of identifying information – does it have like a pre-printed thing on it or –

KT: It does.

LS: What kind of identifying information can you put on an FI card?

KT: We can put down names, birthdays, addresses, phone numbers.

LS: In an instance where two people are identified would you fill out one FI card or two?

KT: It depends – you would use one separate one for each person.

LS: Okay.

KT: A lot of people will flip it over and write information out on the back, you can use it however you want.

LS: Okay. So as you sit here now you believe that both Ms. Moore and Mr. Hayes were identified?

KT: Yes.

- LS: Okay. And after you saw Officer Brown pass the card to Officer Smith, what did you see then? What did he do with it?
- KT: I know he was on the radio performing a records check.
- LS: What did you hear Officer Smith doing on his radio?
- KT: He's switching to a different radio channel.
- LS: What does that mean?
- KT: We have several channels on a radio –
- LS: Uh-huh
- KT: there's primary traffic, secondary traffic, records bureau, tactical channels.
- LS: Is records bureau a specific channel that you would use to do certain checks?
- KT: Yes.
- LS: Did you hear him speaking at all?
- KT: Yeah, I heard him saying that identifying information to the dispatcher.
- LS: Okay, and based on what you were hearing, did you have an opinion about what he was doing what the information he was giving?
- KT: It appeared he was running a records check.
- LS: Okay, and what does running a records check entail? What does that mean?
- KT: Checking for probation status, parole status, warrants, those types of things.
- LS: Did Officer Smith make any mention about anyone having a warrant?
- KT: Not to me.
- LS: Did you hear him say anything about someone having a warrant?
- KT: No.
- LS: Did you learn about whether Hayes had a warrant at that time?
- KT: I know Officer Brown and Officer Smith were speaking to each other and I know Officer Brown directed Smith to arrest Hayes on a warrant.
- LS: Okay. Was there any conversation between Officer Brown and Officer Smith actually informing Officer Smith to confirm the warrant on Hayes?

KT: I don't recall.

LS: Would it refresh your recollection if you refer to your prior interview?

KT: Sure.

LS: Okay, on Page 9 there's a paragraph, Line 375 to 379.

KT: Okay.

LS: So does that refresh your memory at all about the topic of whether Officer Brown directed Officer Smith to confirm a warrant on Hayes?

KT: I don't articulate whether or not Officer Brown directed him to confirm any warrants.

LS: Okay.

KT: Oh actually I'm sorry – yes, okay, yeah.

LS: And so, just for clarity on - the reference that I gave you to refresh your memory, it says, starting at Line 376 "Officer (Gwen) tasked Officer Smith with confirming that warrant and then transporting" and it says "her" from the scene.

KT: It should be him.

LS: Okay, and we're talking about Mr. Hayes?

KT: Yes.

LS: Okay. So did you say that in a previous interview that Officer Brown had tasked Officer Smith with confirming the warrant meaning Hayes?

KT: Yes, that's correct.

LS: Okay. Did Officer Smith in fact confirm the warrant on Mr. Hayes?

KT: I believe so.

LS: What do you base your belief on?

KT: I know he was on channel – the – the records bureau channel for a second before he took Mr. Hayes down to his vehicle.

LS: He eventually did in fact arrest Mr. Hayes?

KT: Yes.

LS: And at any time did Officer Smith make a statement to Officer Brown about the status of Ms. Moore either having a warrant or not having a warrant?

- KT: I don't know.
- LS: Did you hear him make any statements verbally to her about the existence or non-existence of a warrant for Moore?
- KT: I didn't hear any.
- LS: Did you see Officer Smith hand an FI card back to Officer Smith?
- KT: Officer Brown.
- LS: Forgive me let me restate that. Did you see Officer Smith hand a field identification card back to Officer Brown?
- KT: I don't remember.
- LS: While you guys are still outside the apartment, the three of you, and there's been contact made with Ms. Moore, at any time did you ever hear Officer Smith state to Officer Brown that Ms. Moore did not have a warrant?
- KT: No, I don't remember any there was no as far as I don't remember I don't remember any any verbal conversation about warrants until Officer Brown directed Smith to take Hayes downstairs for the warrant.
- LS: Okay.
- KT: I mean we typically don't like to vocalize all that information. It tends to make some people stressed out or combative.
- LS: Okay.
- KT: We try to minimize that.
- LS: Okay. So eventually you mentioned Officer Smith departs with Mr. Hayes –
- KT: Yes.
- LS: and how long would you say that the three of you were up at the apartment together before Officer Smith left with Mr. Hayes?
- KT: Two minutes it was a little while I can't give you an estimate.
- LS: And after Officer Smith left, what's happening, what's going on?
- KT: Officer Brown is still talking to Ms. Moore.
- LS: And at some point does Officer Brown make reference to a warrant to Ms. Moore?
- KT: Yes.

- LS: What does Officer Brown say to Ms. Moore?
- KT: I don't remember the exact verbiage, but I remember Officer Brown told Ms. Moore that there was a warrant.
- LS: Did she tell Ms. Moore, you know, what was gonna happen because of that or –
- KT: Yeah, and and Officer Brown told Ms. Moore that she had the warrant and she was going to come with us tonight for the night.
- LS: How did Ms. Moore react to that?
- KT: Not well. Ms. Moore became extremely upset was just denying, saying, "No, no, no," just getting angry, saying, "That's not true. It's not true," starting to elevate elevate the voice a little bit a lot -
- LS: Okay.
- KT: getting physically agitated, you know, kind of starting to waive the arms around a little bit.
- LS: After Ms. Moore made a statement that it wasn't true, are you talking about her having a warrant?
- KT: Yes.
- LS: Okay. Did Officer Brown make any statements to you about, you know, trying to find out if that was accurate, that there wasn't a warrant?
- KT: No.
- LS: In your police report on this incident, if I can direct your attention to the line where you report on Page 1, "Officer Brown then signaled me to attempt to detain Moore in handcuffs." You used the word *detain*, is that a word that Officer Brown used?
- KT: I used it; I don't remember what Officer Brown's exact verbiage was.
- LS: At some point, while this is going on and after Officer Brown tells Ms. Moore about the warrant and Moore is getting agitated, is there any communication between the two of you about what to do next?
- KT: You mean between Officer Brown and myself?
- LS: Yes.
- KT: Yeah, there was some non-verbal contact when it became clear that Ms. Moore was not accepting the information about the warrant –
- LS: Okay.

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- KT: and did not appear to want to willingly come with us, she motioned for me to try and detain Moore.
- LS: How did she motion? What did she non-verbally do to make you come to that conclusion?
- KT: She used just a for example like motioning her head towards Ms. Moore.
- LS: And you understood that to mean that you were supposed to do what?
- KT: Try and physically detain.
- LS: Okay. What was your understanding of what you're supposed to do to physically detain Ms. Moore?
- KT: Well, typically what we do is we move in and we try to control the arms and just use control holds.
- LS: Using what?
- KT: My own arms and hands.
- LS: And at that time did you have handcuffs out?
- KT: No.
- LS: Are you trying to put handcuffs on?
- KT: No well, that was the intent, but I did not have handcuffs out.
- LS: And in terms of you were intending to use your handcuffs, why were you going to be using your handcuffs?
- KT: Whatever some whenever we're detaining an individual and they're combative or looks like they're about to be combative, they always go in handcuffs for everybody's safety.
- LS: Did Officer Brown make any requests of Ms. Moore to try to come with her short of physically taking her into custody?
- KT: Are you asking if Officer Brown tried to verbally to get Moore to cooperate? Yes, yes for quite a while actually.
- LS: What was she saying to her?
- KT: Just saying, and again I don't remember the exact verbiage, but saying things like just You just need to come with us and just take it easy. Just come with us, it's not a huge deal
- LS: Okay.

- KT: we're just gonna take care of this.
- LS: At the time that Officer Brown gave this non-verbal cue to you, did you know why it was that Officer Brown wanted you to physically go hands-on with Ms. Moore?
- KT: Can you clarify that?
- LS: Yeah, let me ask in a better way. When Officer Brown gave you the cue and you understood that to mean that you were supposed to physically try to take Ms. Moore into custody, is that accurate?
- KT: Mm-hmm.
- LS: Okay. Is that a yes?
- KT: Yes, yes.
- LS: In your mind do you know why she wanted you to do that?
- KT: Because Ms. Moore was getting more and more agitated and we just wanted to keep it from keep Moore from getting even more combative.
- LS: And did you in fact do something did you in fact make contact with Ms. Moore physically?
- KT: I did.
- LS: Okay. Can you tell me what you did?
- KT: I reached in and I I believe I took hold of the left arm at that time and tried to place her in a rear wrist lock.
- LS: And as an assisting officer did you make your own independent determination of whether you should take Ms. Moore into any kind of physical custody?
- KT: Once the decision is made to go hands-on, I my decision was I was going to do what I needed to do, whatever control would work to get the person in handcuffs.
- LS: I just want to get some clarification in terms of who who makes the decision at the scene to put someone in handcuffs or to detain the person. Are you making your own independent determination or are you relying on Officer Brown?
- KT: No, I was working off of Officer Brown's direction.
- LS: Did Officer Brown make any statements to you at the scene about her intentions to arrest Moore versus detain Moore at that time?
- KT: To me?
- LS: To you, yes.

 KT: No.

LS: Did you glean any information from her about what her intentions were to arrest Moore or merely detain Moore?

KT: I remember Officer Brown telling Moore that she had a warrant – that's how I learned that.

LS: In your presence?

KT: Yes, yes - in my presence when I was next to Officer Brown.

LS: Okay. I think you had mentioned that you used your hands and put your hands on Ms. Moore's - was it a wrist?

KT: Um.

LS: One of them I think you said.

KT: Yeah, the left – left wrist, forearm area.

LS: And was Officer Brown doing anything?

KT: Yes, she stepped in at the same time – I believe she was reaching for the right arm but I was focused on my task.

LS: Okay, and when you did that what happened?

KT: Ms. Moore didn't take it well – became extremely upset, it just really resistant, did not want to be put in a control hold –

LS: Okay.

KT: - pretty violently tried to jerk away -

LS: Okay.

KT: - and run back into the apartment.

LS: And what happened then?

KT: I did my best to hold on and try to keep Moore out of the apartment – didn't work. Ms. Moore is considerably larger than me, and while I'm trying to hold on to the arm, pretty much pulls me into the apartment with her.

LS: And what's happening with Officer Brown at that time?

KT: I got no idea, assuming the same thing.

LS: Is she left back at the doorway or is she coming in –

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- KT: Oh, she came in with us.
- LS: Okay.
- KT: And my assumption that I believe Officer Brown was hands on at the same time and we both pretty much got pulled into that apartment.
- LS: Is Moore saying anything at this time?
- KT: Just yelling and screaming.
- LS: And what happened when you eventually get pulled into the apartment?
- KT: So we got pulled into the living room I think it's a living room of that apartment. The mattress is in the floor right at the hallway. There is an individual on the mattress at the time. I don't remember I think Sterling, Mr. Sterling is the name? Does that sound correct? Mr. Sterling sees us come in, immediately just pops up and runs to the other side of the room. Ms. Moore falls trips I guess falls onto the mattress and then before that breaks free of my grasp and falls onto the mattress.
- LS: Okay.
- KT: And as I'm approaching, trying to continue to control the arm, Ms. Moore just starts kicking me.
- LS: Is she making contact with your body –
- KT: Yeah.
- LS: or kicking at you?
- KT: Well, I don't know, specifically, I mean, but definitely kicking hard and making contact with my body.
- LS: Okay, what parts of your body did she make contact with when she's kicking?
- KT: My legs, my hands.
- LS: Okay. Can you describe the level of force that she was using when she was kicking you?
- KT: A lot of force. Moore was kicking really hard, was kicking me back. I in order to keep Moore from thrashing and kicking like that, I basically just dropped down to Moore's hips that's how we're taught to control legs. The legs are strong and they're pretty dangerous and can cause some significant injuries, so I dropped down to the hips to try and control Moore's legs, but Moore just Moore was still kicking really hard and kicking me up in the air and basically kicking me off a few times.
- LS: And when Moore initially fell to the mattress, how is her body positioned when she first fell onto the mattress?

- KT: I think she was on her she's facing the wall, so that will be the left side; she fell on her left side and was facing the wall.
- LS: And you had mentioned that you were trying to control the hips, what are you doing with, you know, are you using your body, your hands, or what are you –
- KT: I call it a I I, in my own words, I sprawl and what I do is I I drop the majority of my body weight I put my abdomen on the hips, so that way my body weight can keep the hips pinned down, and then I can use my legs to try and control the subject's legs.
- LS: Okay. Can you describe if any part of your body is above the waist of Ms. Moore?
- KT: Mm-hmm. Well, my chest area is above on like the low back area –
- LS: Okay.
- KT: but I was kind of propped up. I was arching my back up because I was also using my hands to try and continue to control the arm, the right arm, or right arm, yeah right arm.
- LS: What is Ms. Moore doing with her arms, are they both free?
- KT: At this point they're both free. I had access to the right arm because it's the one facing me, flailing away, trying to break free of my grasp. I grabbed the arm again at the wrist and uh, it takes me a second but I was able to get the arm in a what we call a rear wrist lock behind the back.
- LS: And what's happening with the other arm?
- KT: At that point I'm not too sure, I know Moore at one point rolls onto her stomach to try and pull away, and then at that point the left arm was completely under the body, and I know we could not access it at that point.
- LS: And is Moore on this mattress you've described while this is happening?
- KT: Yes.
- LS: Can you describe the is it real low to the ground or high up? What like –
- KT: It was just a mattress. In my recollection it's a mattress without a frame just on the floor.
- LS: Okay.
- KT: I don't know if it was like a like l think it was like some kind of thin mattress.
- LS: Can you describe I don't know how to say this for a lack of a better word like how squishy it is, you know, is it directly on the floor?
- KT: The mattress is directly on the floor, yes.
- LS: Okay.

- KT: As to the firmness of it, I I can't say.
- LS: Okay.
- KT: I wasn't paying attention to that.
- LS: What is Officer Brown doing during this time?
- KT: Officer Brown is trying to get ahold of the other arm, the left arm.
- LS: And the reason that you applied your body weight to the hip area and the reason that you tried to put Ms. Moore into a I think you called it a –
- KT: Wrist lock.
- LS: wristlock, what was the reasoning for you doing those things?
- KT: The wristlock is standard handcuffing position. It's a good way to you get leverage on the individual and try to immobilize the arm, so it prevents them from punching or reaching for weapons or anything. You have control of that arm –
- LS: Mm-hmm.
- KT: so now you can handcuff it and prevent them from harming you with it. Me dropping on the hips has a couple of purposes, and it allows me to the big thing is it allows me to prevent or try to prevent a subject from kicking out further and prevents anyone from getting kicked, you know, we don't want to get kicked in the face or anything like that. So we try to immobilize the legs with that and, second, it also helps to try to keep the subject, you know, under control the body under control.
- LS: Okay. And you mentioned at some point that you think you were kicked off, is that what you said?
- KT: Not like kicked back and completely thrown off, but I was getting Moore was like bucking the hips and kicking and so I was going up in the air, and it was hard for me to maintain my position at the hips.
- LS: Was there any effort to get help?
- KT: Oh yeah, Officer Brown got on the radio and called for cover.
- LS: Did any other officers arrive?
- KT: Yes.
- LS: Who was that?
- KT: The first one was Officer Smith and then after that I believe Math- Officer Mathis, Gardner, and Kastmiler came.

- LS: Okay. And what did they do?
- KT: Officer Smith assisted in getting control of the other arm, and we were able to handcuff at this point once both arms were secured.
- LS: And what did Mathis and Gardner do, and Kastmiler I think did you say Kastmiler?
- KT: Kastmiler, correct. I don't know the specifics, but I know they were also trying to help secure the legs. And I know one of them applied the Wrap, the ankle strap to the Wrap.
- LS: Okay. How long did it take from the time that you initially tried to make contact with Ms. Moore at the doorway to the time when the handcuffs were successfully put on how much time in your best approximation are we talking about to get those cuffs on?
- KT: So you're including in the time at contact when the door was opened –
- LS: No, starting sorry starting from when you first put your hand on Ms. Moore –
- KT: Oh okay. Okay, when we initially tried to okay.
- LS: Yes.
- KT: Mmmm several minutes I would say. It took it took we're struggling on our own for it felt like a long time maybe a couple of minutes before before the first officer came.
- LS: Okay, and was it when Smith arrived that you were able to get the cuffs on?
- KT: Yeah with his help we were able to get the cuffs on.
- LS: Both hands?
- KT: Both hands.
- LS: And when, if you can recall, when did the other three officers arrive in relation to Smith?
- KT: Again, I I would guess maybe another couple minutes I perception of time in a situation like that is probably a little skewed.
- LS: When Ms. Moore was put into handcuffs, was she then compliant?
- KT: No.
- LS: Can you describe what she's doing?
- KT: Yeah continued to try and struggle, continued bucking the hips, kicking away, just thrashing about.
- LS: And you had mentioned something about a wrap.

KT: Uh-huh, yes.

LS: Does it appear at the scene or –

KT: At some point it appeared.

LS: Do you know how?

KT: I have no idea.

LS: Did you ask for it?

KT: I didn't ask for it.

LS: Do you know who did?

KT: Nope.

LS: And what did you see happening with regard to the Wrap? Was any portion of it put on Ms. Moore?

KT: I believe the ankle portion was – was put on - or I know the ankle portion was put on.

LS: Okay, and who – who put that on?

KT: Either Officer Mathis or Officer Gardner.

LS: Did you put that on or did you assist in it?

KT: No.

LS: And what's the purpose of applying an ankle wrap – ankle strap I should say?

KT: Ankle strap, yeah. It – the primary purpose would be to immobilize the ankles to help prevent kicking.

LS: And was it in fact applied?

KT: Yes.

LS: And after it was put on Ms. Moore, did she become compliant?

KT: Shortly after that, yes.

LS: You say *shortly*, what's going on in between?

KT: In my recollection there were some more thrashing before it appeared that Ms. Moore decided to give up.

- LS: During the time that Ms. Moore was positioned on her stomach during this interaction, did you see how her face was positioned with regard to, you know, the mattress, whether it was looking straight down at it, whether it was making contact?
- KT: I believe she was still looking to the left even when faced down.
- LS: And once Ms. Moore was put into handcuffs and the ankle strap is put on, was there any did officers make any change to how she was positioned?
- KT: Yes.
- LS: What happened in that regard?
- KT: Once once Ms. Moore stopped struggling, we put Ms. Moore on her left side I believe it was the left side.
- LS: And why did you do that?
- KT: We did that to prevent a Positional Asphyxiation.
- LS: And how much time passed between when Ms. Moore became, you know, calmer, to when she was moved to her side?
- KT: Not much time at all, my guess would be maybe less than a minute.
- LS: And when Ms. Moore was on her side was anyone asking her questions?
- KT: I know Officer Brown was trying to talk to Ms. Moore?
- LS: Do you remember what she's saying to her?
- KT: I don't.
- LS: Do you remember whether Ms. Moore was responding to whatever it was Officer Brown was saying while she's on her side?
- KT: Ms. Moore wasn't answering our questions at that point.
- LS: What did you observe with regard to Ms. Moore at that time, I mean physically, were her eyes open, or?
- KT: I don't remember if the eyes were open or not. I remember I remember Moore was was I remember Moore was was appeared to be breathing. I don't remember if she was making any noises or not, but I know that she wasn't answering any questions.
- LS: Was any officer monitoring whether Ms. Moore was breathing or had a pulse at that time she is on her side?
- KT: Yes.

- LS: Who is doing that?
- KT: Officer Brown.
- LS: Sorry.
- KT: Officer Brown.
- LS: Okay. And is Officer Brown relating to you the status of whether Ms. Moore is breathing and has a pulse?
- KT: Yes.
- LS: What did she tell you?
- KT: She told us that Ms. Moore at that point was breathing and had a pulse.
- LS: At the time that you were there and Officer Brown was saying things to Ms. Moore and Ms. Moore was not responding, did you have any ability to determine whether that was, you know, intentionally not responding or not responding because of being in some kind of medical distress?
- KT: I couldn't tell.
- LS: Was there any reason that either you or the other officers didn't sit Ms. Moore in an upright position as opposed to rolling her onto her side?
- KT: From what I could recall, we were always taught to roll onto the side, plus Ms. Moore is an extremely large individual, at that point it's I felt it was best to to keep her on her side.
- LS: Okay. During the time that Ms. Moore was positioned on her stomach, did you ever see any officer holding her head and putting pressure on her head?
- KT: Absolutely not.
- LS: Did you yourself do that?
- KT: No.
- LS: And during the time she's positioned on her stomach did you see any officer apply pressure to her back?
- KT: No.
- LS: Did you yourself do that?
- KT: No. When you say *that*, you mean like upper back or?
- LS: Forgive me, yes, above the, you know, upper back, yes.

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- KT: No, no, no.
- LS: Okay. And at any time when Ms. Moore is positioned on her stomach did you make any efforts to monitor her vital signs?
- KT: From where I was, no, but I was pretty clear Moore was still yelling and screaming, so it was pretty clear she's still breathing.
- LS: Did you ever hear Ms. Moore make any statements in your presence that she was having trouble breathing?
- KT: No.
- LS: Did you ever hear her make any statements that she was having any medical distress?
- KT: No.
- LS: At some point after she's rolled on her side is there a change to the breathing and/or pulse?
- KT: Yeah, a short while later I don't can you repeat that question one more time?
- LS: Yeah. After Ms. Moore is rolled onto her side, at some point did you notice or do you become aware of any change in her breathing or her pulse?
- KT: Okay, a short while later, I remember Officer Brown informing us that she thought or she couldn't find a pulse and didn't think Moore was breathing any more.
- LS: Okay. And what did you and the other officers do at that point?
- KT: We pretty much got Moore out of handcuffs, rolled her on her back and immediately began CPR.
- LS: And you were doing chest compressions, is that right?
- KT: Yes.
- LS: Do you know I think you mentioned earlier that you weren't sure if the leg restraints were on do you have any more memory about that?
- KT: During compressions? During CPR? I don't know.
- LS: Okay. But you specifically recall the handcuffs being removed?
- KT: Yes.
- LS: Did Ms. Moore stop breathing or lose a pulse one time or did it come back and then happened again while Officer Brown is in her presence was it, you know, one time that she said, *Hey, not breathing, no pulse*?

KT: I – from my perspective it was just that one time when she mentioned it.

LS: Okay.

KT: She appeared to be continuously monitoring the whole time I was there.

LS: Okay. If I can just review my notes here.

Rep: I don't have any questions.

LS: Okay, almost done. Mr. Sterling, you had mentioned sort of got up off the mattress - what did he do?

KT: Oh, Officer Brown told him to get out, and he got out.

LS: And why would you ask someone to leave under those circumstances?

KT: It's a major safety issue to have someone else in there for everybody. We don't want — we don't want Mr. Sterling to be hostile. Mr. Sterling in that situation potentially could've caused great harm to us. Also, just in those close quarters we don't want Mr. Sterling to get hurt. We don't want it to get back up, go across the room, and take Mr. Sterling out.

LS: Okay. I have no further questions and you've mentioned, Mr. Stern, you don't have anything you'd like to clarify.

Rep: I do not.

LS: Okay.

Rep: Thank you.

LS: The time is now 7:07 and that concludes our interview. Officer Tu, thank you for your time today.

STATEMENT OF OFFICER SMITH PRC COMPLAINT #2327

- LS: Lucinda Simpson, PRC Officer BN: Byron Norris, PRC Investigator
- BS: Officer Smith, Subject Officer
- HS: Harry Stern, Legal Rep.
- LS: This is PRC Officer Lucinda Simpson and today's date is August 28, 2013. The time is 6:07 p.m. I'm here with Officer Brandon Smith, Badge #3. Also present is his counsel Mr. Harry Stern. Also present is PRC Investigator Byron Norris. Officer Smith is a subject officer on complaint #2327. Officer Smith you are here under the provisions and protection of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights pursuant to the Lybarger Doctrine because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Smith, Mr. Stern, are you aware that this interview is being recorded?

- HS: I am.
- BS: I am.
- LS: And Officer Smith, will you answer the questions today truthfully and to the best of your ability?
- BS: I will.
- LS: All right. Officer Smith, what is your current position?
- BS: Police officer.
- LS: And how long have you been a sworn officer?
- BS: Ten-and-a-half years.
- LS: And can you just describe some of the prior assignments that you held during that time?
- BS: Patrol officer, traffic I was assigned to the traffic unit as a motor officer; I'm currently and have been on the bomb squad for the last 8 years; I'm a field training officer; and a patrol rifle officer.
- LS: And by any chance are you a member of the what's called the Crisis Intervention Team?
- BS: I am not.

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Transcribed by MGM 9-12-13 Reviewed by BN 10.4.13

- LS: And, if I can direct your attention to on or about February 12th of this year, sometime before midnight, can you describe what your height and weight was?
- BS: 5-10 235.
- LS: Okay, and at that date, to your knowledge was the Crisis Intervention Team shall we say up and running?
- BS: It may have been in its infancy stage. At that time I was not fully aware of where it was at.
- LS: Can you describe what your knowledge was with regards to its existence at that time?
- BS: Very limited at that time, that's that's really all I can say.
- LS: Okay, had you had any briefings about its creation?
- BS: I believe there were there was talk about it going to be created at that time I was not sure if it had been, who was on it, who was certified.
- LS: Okay. And you were on that date, February 12th, that was Team 4, right?
- BS: Correct.
- LS: And to your knowledge you didn't know who specifically was CIT trained or not.
- BS: At that time I did not know of anyone who was CIT trained.
- LS: On that –
- BN: Excuse me. Is there anything about the CIT team that you knew at the time that you could share with us?
- BS: Just that it was being developed that's all at that time that I knew about.
- BN: Would it be accurate to say that the CIT team was not an option for officers to utilize when necessary?
- BS: I was not aware of whether there was an option, if that makes sense, at that time.
- BN: Yes.
- BS: Okay.
- LS: Were you familiar with any BPD general order regarding CIT?
- BS: At that time I can't really say Yes or No.
- LS: So if we can go back to the date in question and I'm just going to refer to it as (inaudible) February 12th just before midnight of this year. Did you happen to receive a dispatch call to an apartment on Allston Way?

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- BS: I did.
- LS: Could you just describe briefly what you heard what information was conveyed to you through dispatch?
- BS: I was dispatched as a cover officer to a report of the reporting party stated that their roommate had kicked them out and that they were on drugs, and, I believe there's mental health issues.
- LS: And did you ultimately arrive at the location on Allston?
- BS: I did.
- LS: Did you were there other officers there that arrived as well?
- BS: There were two officers on scene when I arrived.
- LS: Who was that?
- BS: Officer Brown and Officer Tu.
- LS: And prior to arriving at the location did you receive a name of an involved party at any___time?
- BS: Yes it was in the dispatch call.
- LS: What was that name?
- BS: Xavier Moore.
- LS: And prior to arriving at that location did you do anything with that name?
- BS: I run a records check on my mobile field computer.
- LS: And what were you what does that encompass when you run a records check?
- BS: It's basically when you do multiple things from the computer we can run license plates; we can run people's names, drivers license, things like that so all I did was, I typed in the name, hit enter, it runs a search to see if there's any associated names, prior contacts, stuff like that.
- LS: And does it also check for the existence of warrants?
- BS: Yes.
- LS: And do you know what what database it taps into?
- BS: Yes, it goes through NCIC and also there's multiple ones, but that's what I specifically ran was a person, so, that's what it runs through as well as DMV.

- LS: Does it also run through CLETS to your knowledge?
- BS: Yes.
- LS: Does it run through AWS?
- BS: I think you have to specifically run run something through AWS, and I'm not I'm not so sure right now if if you run a name if it'll automatically go through AWS.
- LS: So, after you run the name, what happens?
- BS: A couple of hits came back for warrants, one of them with the name that matched the name that I had entered.
- LS: Was there any information with regard to the warrant as to its status, any like a code, whether it was active, whether it was seeking, you know, a call for confirmation anything you remember about it?
- BS: Not specifically I know what I recalled of it was that the name matched and that it was a \$10,000 warrant out of San Francisco. I think I was half-a-block away when I got the return, so I just kind of glanced at it quickly.
- LS: And other than the name, the amount, the jurisdiction, any other identifying information or the offense that it was for that you recall?
- BS: I believe that it was I want to say that it was Penal Code 245, assault with a deadly weapon, but I can't say for certain that that's what it was.
- BN: You said there were a couple of hits can you clarify that?
- BS: Yeah, I'm sorry, when you run a name and the name only without a birthday, without, sex, race, a lot of times it will come back with similars to, if that makes any sense. My name Brandon Smith, you type in B R A N D O N S M I T H, there's a likelihood that there's probably more Brandon Smiths out there, and so sometimes what it will come back with is it will say there's 27 similar names or sometimes it will come back and say that there's five Brandon Smiths and it will give you a date of birth and a city of their driver's license.
- BN: But in this instance you got two hits, two likelihoods, with similar names?
- BS: The one I recall was the one that the name matched exactly -
- BN: Okay.
- BS: Xavier Moore.
- BN: And so you don't recall if the other hit was related to the involved party?
- BS: Yeah, I don't I don't recall that.

- BN: And how many warrants came up on your search? Was it just the one?
- BS: I believe that it was that was the one that came up.
- BN: Okay.
- LS: And if I can show you page 54 it looks like you have a packet there of some sort if your counsel wants to look at this but this is some kind of a teletype of a warrant in the name of a person named Xavier Moore. Does that refresh your recollection of the offense that it was for?
- BS: Yes.
- LS: And how so?
- BS: I mean it looks like the it looks like the \$10,000 warrant out of San Francisco.
- LS: I mean, it being for the type of offense. You mentioned possibly at 245?
- BS: I I was guessing that that's what it was I could be confusing that with something else I don't know.
- LS: If you look at this teletype, do you see an offense listed as a 242?
- BS: I do see that.
- LS: And is that notice of battery?
- BS: Yes.
- LS: Okay, thanks. So after learning this information you arrive at the scene what did you do at that point?
- BS: I got out of the car and spoke with Officer Brown and Officer Tu who was standing in front of the apartment complex.
- LS: Did you also have occasion to talk to a person by the last name of Hayes?
- BS: Yes, after I spoke with Officer Brown and Officer Tu.
- LS: Was that before you entered the apartment and went upstairs?
- BS: Yes.
- LS: Okay. Could you tell what Mr. Hayes told you?
- BS: Can I refer back to my report?
- LS: If it refreshes your recollection –

- BS: Okay.
- LS: yes.
- BS: Hayes had stated that his roommate Xavier had kicked him out and needed to be 5150'd.
- LS: And when you say 5150, was that a word that he used or was that a word that you –
- BS: That was a word that he used.
- LS: Did Mr. Hayes describe to you whether Ms. Moore had been involved in any kind of drug use or alcohol use?
- BS: Again, I'm going to have to refer back to other stuff here —---- yes.
- LS: What did he say in that regard?
- BS: Said that he was not on medication and was drunk and high.
- LS: And was there any specific information about being high, any more detail about what that entailed or any specifics?
- BS: At that time I don't recall. Later on he went much more into specifics.
- LS: Was this after the contact with Moore?
- BS: Correct.
- LS: So at this time, again, before you go upstairs and contact Ms. Moore, was there any did Mr. Hayes give you any specific information detailing why he thought Ms. Moore needed to be 5150'd?
- BS: I don't recall that; I didn't I wasn't the one actively in conversation with Mr. Hayes at that moment though either.
- LS: Who was that person?
- BS: I believe it was Officer Brown.
- LS: And what was your role in relation to you and Officer Brown and Officer Tu?
- BS: Officer Brown was the what we refer to as the handling officer, so she was the one that is basically in charge of the scene. I was a I was dispatched as a cover officer, and Officer Tu attached himself to the call.
- LS: Can you briefly describe before we move on what if any training and experience do you have in 11550 evaluations?
- BS: I have gone through an 11550 course. I don't use it very often. And, as far as to make arrests but it was it was a class that was taught here at the Berkeley Police Department.

- LS: What year was that?
- BS: Can't tell you right off hand; I don't recall. It was probably in what year is it now '13 so probably 2006 I'm roughly estimating.
- LS: And how long was the course?
- BS: It was a week long.
- LS: 40 hours?
- BS: Yeah.
- LS: What kind of things were covered in that course?
- BS: Signs and symptoms of varying narcotics abuse in in humans.
- LS: Any training on recognizing objective symptoms?
- BS: Yes.
- LS: Any training on conducting investigations?
- BS: Yes.
- LS: Use of in-field testing or what we call you know like a FST if you will?
- BS: Correct.
- LS: And then, just so there's some clarity on the record, what is an 11550? What does that mean?
- BS: It is a penal code, it's associated with someone under the influence of narcotics.
- BN: You said you don't use it very often?
- BS: Yes, I've made very, very few arrests for someone under the influence of narcotics.
- LS: How many have you made?
- BS: Probably two.
- LS: And can you also briefly describe any training and experience that you have in conducting 5150 evaluations?
- BS: Training early on when I first came to the Police Department I got training from my Field Training officers as well as the Berkeley Mental Health staff. I've personally probably written it's going to be a tough one to even guess definitely over 25 green sheets for placing somebody on a 5150 hold.

- LS: Was that some- so are you saying that you personally did a 5150?
- BS: I personally wrote the paperwork for that.
- LS: Okay, so you –
- BS: But I've been on, I don't know how many more calls where Mental Health staff came to the scene and they were the ones who physically wrote the paperwork.
- LS: Okay, I just want to get some clarification what you mean by writing the paperwork, does that mean that you were the person that's forming the opinion that someone should be 5150'd?
- BS: Correct.
- LS: And you've personally done that approximate 20 times?
- BS: Yes.
- LS: Okay.
- BN: And the green sheet is that like a formal referral to -
- BS: Correct.
- BN: Mental Health?
- BS: It is it is the paperwork that has to be completed to place someone on the hold and then it gets transported out with them to the psychiatrist facility for for the medical physician to or psychiatrist to and I don't know a whole lot I'm not on that side of it to see what it was that caused this person to be brought to the attention of us as the Police Department and what we observed and what they said, things like that.
- LS: And in your training and experience what are some of the things that you take into consideration when you make a decision to 5150 a person?
- BS: Oh I think I I try to take everything into consideration: how they're acting, things that they say, prior history; I ask I ask a lot of questions regarding any kind of diagnosis, medications. Are they taking medications? Are they eating? Do they want to hurt themselves or other people? I try to look at the whole picture.
- LS: Now eventually do you go upstairs to a particular apartment?
- BS: Yes.
- LS: Can you describe what happened when you got there what you saw?
- BS: To the apartment specifically?
- LS: Yes.

- BS: The door was closed and were there was a it's on the 5th floor there was a landing that was probably I don't know maybe 8 to 10 feet from the front door with metal, it's not a fence, railing I guess is what you call it with –
- LS: At some point does an officer knock on the door or try to get Ms. Moore's attention?
- BS: Actually, Mr. Hayes unlocked and opened the door.
- LS: Okay.
- BS: And then Officer Brown called out.
- LS: What happened when Officer Brown called out?
- BS: Someone came to the door.
- LS: And do you know who that person was?
- BS: At that time I did not.
- LS: Who did you later determine it to be?
- BS: Xavier Moore.
- LS: And can you describe the interaction that took place at the door?
- BS: Yeah, Officer Brown was asking Xavier what was going on, what had just happened, what the relationship was between her and Hayes as well as just investigation questions trying to figure out what was going on.
- LS: And where is Ms. Moore? Is Ms. Moore in her apartment or at some point –
- BS: She's partially out on the landing; she opened the door and stepped out.
- LS: Okay.
- BS: So, she's kind of like right right on the threshold and a little bit out outside.
- LS: Okay. And what was Ms. Moore's demeanor like during her interaction with Officer Brown what did you observe in that regard?
- BS: She was very at first very calm and then immediately began acting extremely erratic. She kept saying things that just were not on topic that didn't sound oh it just wasn't a typical conversation with someone.
- LS: Can you give me some like examples of –
- BS: Sure.
- LS: statements you're talking about?

- BS: When Officer Brown was asking explaining to her why we were there and explaining that, you know, we need to just ask some questions and find out what was going on, and Xavier said that she needed to go talk call the FBI to see if she could talk to us. And she was real fidgety, scratching herself all over, pulling on her her blouse and her skirt and very agitated, animated, and was unable to to just stand still and hold a conversation. Multiple times Officer Brown had to get her attention again to try to get back on topic; she kept going off topic talking about other things other than what was occurring there.
- LS: Do you recall whether Ms. Moore discussed things pertaining to any kind of auditory or visual hallucinations or things that were not there or not present?
- BS: It was back in February (laugh). Let me refer back to some information here. She was very incoherent at times. Some of the stuff that she would say I can't say that it was even English it was kind of gibberish to some extent.
- LS: Were there any statements by Ms. Moore regarding her ability to recognize you as an officer?
- BS: The only one that may have fit that was that she had to check with the FBI to see if she could talk to us.
- LS: Okay.
- BN: You said earlier that she was fidgeting?
- BS: Yes.
- BN: Did she make contact with you and any other officers eye contact?
- BS: Sporadic; she looked down, looked behind her, you know, kind of was not focused on us specifically, lots of thoughts going through.
- BN: Did you see any signs of perspiration?
- BS: I don't recall.
- LS: Can you describe whether you observed any objective symptoms of being under the influence of control substance in Ms. Moore at that time when you were at the door?
- BS: Yeah, I think I believe her pupils were somewhat dilated, fairly well lit and when you can see somebody's pupils in a fairly well-lit area that looked larger, that's not typical, which is which is a sign of or a symptom of some sort of narcotic or medication or something.
- LS: Do you recall stating in your interview with the criminal investigation in this case that it appeared Ms. Moore was under the influence of some form of narcotics?
- BS: Yes.
- LS: Do you recall saying that?

- BS: Yes.
- LS: Is that still your position today?
- BS: Yes.
- LS: And why did you come to that belief?
- BS: Well in in my in my experience of being a police officer, we come into contact with people who are under the influence of all kinds of varying narcotics. Stimulants tend to cause people to be agitated, unable to sit still, scratch themselves a lot, be talkative, all of those those signs and symptoms kind of added to that, what my belief was.
- LS: And apart from this initial observations, did you get engaged in any kind of further investigation to confirm or dispel?
- BS: No, I did not.
- LS: Why not?
- BS: It was not my call. I was the cover officer.
- LS: Did you at that time, when Officer Brown first made contact with Ms. Moore, did you make any observations of your own as to Ms. Moore that were pertinent to Mr. Hayes telling you that she needed to be 5150'd?
- BS: I'm sorry, can you repeat that?
- LS: Sure. At the time that you were initially at the door contacting Ms. Moore, and Officer Brown was there, did you make any observations you personally make any observations about Ms. Moore that were pertinent to Mr. Hayes telling you that or telling the officers that Ms. Moore needed to be 5150'd?
- BS: I'm let me try to because it was kind of convoluted for me it sounded like you were asking me if I was trying to make a determination at the door based upon what Hayes had told me about Ms. Moore.
- LS: Let me try to rephrase it in a more clear way.
- BS: Okay.
- LS: Is there anything that you observed about Ms. Moore yourself that was relevant to you earlier learning from Mr. Hayes that he was saying she should be 5150'd?
- BS: Well, I think the fact that he said that and then seeing her actions and the things that she was saying obviously when when somebody initially tells you that somebody needs to be 5150'd it's always in your mind, so you're going to evaluate that. Did I determine at any point that she did need to be 5150'd, is that what you're asking me?
- LS: No, I'm not asking that.

BS: Okay.

LS: I'm asking you did you make any observations of Ms. Moore that were relevant to Mr. Hayes saying this person should be 5150'd.

Rep: Did she seem like she had 5150 criteria present?

BS: Potentially.

LS: In what - how so - what kind of things were you seeing?

BS: It was the – the rambling on, the talk of the FBI that she was going to call the FBI, just things like that.

LS: And, you yourself, again, were you undertaking any additional investigatory actions at that point with regard to a potential 5150?

BS: I was not.

LS: Okay. If I can just go back briefly to after you run the name for the records.

BS: In the car?

LS: In the car. And you learned the information that you previously described, did you convey that information to anyone?

BS: I did.

LS: Who did you convey it to?

BS: Officer Brown and Officer Tu.

LS: And specifically what did you tell them?

BS: That a person with the same name had a warrant out of San Francisco for \$10,000.

LS: And was there a response when you said that?

BS: Officer Brown said that "Xavier Moore used to live in San Francisco so it's probably for him."

LS: And did you ask for any additional information from Officer Brown?

BS: Yeah, I asked if she knew – because it sounded like she had had previous contacts with Xavier – so I had asked if she knew how old they were.

LS: And what did she tell you?

BS: I believe she said 42, around 42, something like that.

- LS: And what did you do with that information?
- BS: I went back to the police car and I looked at the computer and looked at the birthday that was on that warrant.
- LS: Do you recall what the birthday was on the warrant?
- BS: I believe the year was 1952, or maybe it was 42, I I don't recall I can look back if you want me to.
- LS: If it will help your memory, yes.
- BS: I don't seem to find it right at this moment. (paper shuffling). 1952.
- LS: And do you know what the year and the month were?
- BS: I do not.
- LS: Would it refresh your memory if I show you this teletype -
- BS: Yes, it would.
- LS: 54.
- BS: The teletype says 4-17 of 1952.
- LS: Did you were you concentrating on the year or all of the data at the time?
- BS: The year.
- LS: And after you determined 1952 being the year of birth, what did you do with that information if anything?
- BS: I think I went back and said, I'm not sure or I don't think that that's the right person because the age doesn't match the the year or the date of birth something to that effect.
- LS: And who did you convey that to?
- BS: Officer Tu and Officer Brown were there.
- LS: Where did that conversation take place?
- BS: Still at the front door of the apartment –
- LS: Was that -
- BS: of the complex, not the apartment door.
- LS: So before you go up and –

- BS: Yes.
- LS: Okay.
- BN: Before you have your initial contact with Ms. Moore?
- BS: Correct.
- LS: And, as you sit here, how do you recall conveying that information?
- BS: I believe at that time that Mr. Hayes had come up, and so I kind of got out of the car and as I was walking back up I said it. So, I don't know if I don't know if they heard it because that's when I know Hayes was there and I think there was a conversation going on there as well.
- LS: So, you're walking up to them and you say what exactly?
- BS: Exactly I don't know if I can repeat exactly but approximate what I said was *I don't think that that is him because the age doesn't match the date of birth.*
- LS: Did you get a response from either Officer Brown or Officer Tu when you said that?
- BS: I don't recall that.
- LS: Do you remember them, you know, reacting to you or looking at you in response -
- BS: I think they were they kind of looked over at me as I talked.
- LS: Okay. And then eventually you go back upstairs you go upstairs for the first time after that conversation.
- BS: Correct.
- LS: At any time during this initial contact at the apartment did you have occasion to run any additional information –
- BS: Yes.
- LS: specifically for warrants.
- BS: Once I was up there?
- LS: Yes.
- BS: Yes.
- LS: Can you tell me what you did?
- BS: On my police radio I switched the channel to the channel where we run records check on. I spoke to one of our dispatchers on telecom and ran a records check on both Hayes and Xavier Moore.

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- LS: And had you or any of the other officers obtained any additional identifying information from Moore prior to you doing that?
- BS: Yes, we as far as I I don't know if Officer Brown actually had an ID card or a driver's license, but she completed what we call a field card interview, which basically has information of name, date of birth, height/weight, sometimes it will we'll get that verbally from somebody sometimes. Other times we'll ask for their ID and will copy the information down.
- LS: Okay.
- BS: So I use that information.
- LS: And so she filled out the field identification card?
- BS: Correct.
- LS: And then at some point did she give it to you?
- BS: Yes.
- LS: And when you ran Ms. Moore did you use any of the information on that FI card?
- BS: I did.
- LS: Okay. What was the date of birth that you, did you run a specific date of birth?
- BS: Yes.
- LS: And what date of birth was that?
- BS: I cannot tell you that; I don't know; I don't recall.
- LS: Is that in your report or –
- BS: I don't believe so not that I not that I see.
- LS: Do you recall if it was different than 52?
- BS: I don't recall.
- LS: When whatever date of birth you ran was it the date of birth you were given?
- BS: Yes.
- LS: And any other specific identifying information that you included in that inquiry other than the name, date of birth?
- BS: I would have to listen to the if there was a recorded audio of me running it. Typically, when I run a records check of somebody, I give the last name, first name, middle initial, birth date, and sex, and race.

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- LS: Okay.
- BS: That's very typical of what I how I run it.
- LS: Do you recall what sex or race you provided?
- BS: I do not.
- LS: So after you did this, did dispatch get back to you?
- BS: They did.
- LS: What did they tell you?
- BS: They told me that Mr. Hayes had a warrant for I believe vandalism out of San Francisco for the amount of \$5,000 I believe, and then told me that Xavier Moore had caution codes for assault with a deadly weapon.
- LS: What is a caution code?
- BS: It's prior prior arrest history when someone that has someone has been arrested, sometimes convicted of specific crimes that could be officer-safety issues, they get entered in and they'll come back when you run a records ch- when the Records Division runs a records check.
- LS: At the time that you had run the name Xavier Moore in your patrol car before you got to the scene is that what you would call a confirmed warrant or is that done later upstairs?
- BS: Yeah, you confirm that later.
- LS: So when you got out of the car at that point was that warrant confirmed?
- BS: It was not.
- LS: And the confirmatory actions that you undertook were at the door of the apartment?
- BS: For Mr. Hayes?
- LS: For Mr. Hayes and for Ms. Moore.
- BS: Mr. Hayes had a warrant that came back from our Records Bureau and I confirmed that with them.
- LS: Okay.
- BS: I did not get any kind of a warrant hit on Xavier Moore through the Records Division.
- LS: Okay, so it's just coming back with an absence of a warrant and a caution code?
- BS: Correct.

- LS: Okay. And what did you do if anything when you learned that information?
- BS: I told Officer Brown who is still engaged in conversation with Ms. Moore that Hayes had a \$5,000 warrant out of San Francisco and then I handwrote because Ms. Moore was so agitated I didn't want to say something that would make her even more angry or become violent with us. So I handwrote on the field card *caution code 245* and handed it to Officer Brown and pointed at it.
- LS: And when you did that, was there any reaction from her? Did you observe her?
- BS: She -I I believe she looked at it as I handed it to her and pointed, she looked.
- LS: Okay. And where where is that FI card?
- BS: I don't know.
- LS: Does your agency maintain FI cards –
- BS: Typically we don't keep the ones that we we write in the field.
- LS: Okay. What's sort of the common protocol or practice when a FI card is made? What do you do with it?
- BS: Typically we put them in the shred bin at the end of the night.
- LS: Do you have any personal knowledge of where that FI card is or its existence?
- BS: I do not.
- BN: Under what circumstances do you not put them in the shred bin, that you retain them?
- BS: Years ago before we became a semi-paperless system, when I first started here, we used to put them into there was a basket on the briefing table and they would go there and then they would go upstairs and I don't know where they went from there.
- Rep: I can confirm that practice and I don't think they went anywhere.
- BS: And they were considered field cards at that point in my career, but that was real early in my career. Since we've become more automated, we actually have in our computer system a specific report, so to speak, that is just for field cards. So if I make contacts with with you out in the field for being in the park after hours, I can put your information that I wrote down and put it on a field card so that way somebody else upstairs which I think that's how they used to do it I don't know, Mr. Stern could possibly answer that.
- Rep: For the record I was never clear what they do with it.
- BS: So, I was under the impression that somebody upstairs in the Detective Division would take those field cards and somehow file them or re-enter the information somewhere for a contact of a person at a location in case another crime had occurred with similars, if that makes any sense.

- LS: So after you hand the field identification card back to Officer Brown, do you ever see it again?
- BS: No.
- LS: Okay. And what happens after you do that?
- BS: Officer Brown continues talking with Ms. Moore and at some point I asked Officer Brown if she wanted Hayes arrested for the warrant, because I was still waiting to confirm that information through when I say *confirm*, meaning, I tell my Records Bureau to contact the agency that has the warrant and say to send it over to the jail that's what I mean by when I say confirm; I don't know if that's clear or not that the Records Bureau was standing by for confirmation.
- LS: Are there ever occasions where you receive information that someone may have a warrant and you need to go through additional steps to confirm that or get clarifying information?
- BS: Not not us as officers there are times where the our Records Department or our Telecom will actually have to make a manual phone call to the agency to say *Hey do you really want this person? Are you willing to take them because it's out of our jurisdiction of Alameda County?* And so there are sometimes extra steps in it, yes.
- LS: And when those extra steps have to be undertaken, you know while you're waiting for that to happen, what would the status of a person be then with regard to –
- BS: It'd still be detained.
- LS: Okay. So the status while you're waiting to sort of follow through that process is that they are what?
- BS: Detained.
- LS: So that you can do what?
- BS: Further investigation.
- LS: To?
- BS: Confirm a warrant.
- LS: Okay.
- BN: You said earlier that Officer Brown made a statement to you after one of your records check that she believed or knew that Ms. Moore had prior residence in San Francisco?
- BS: Correct.
- BN: Did you ever learn or did she ever explain to you how she knew that?

BS: I believe when we first got there that Officer Brown had told me that she had had previous contacts with Ms. Moore as well as Ms. Moore's mother for – for other issues.

BN: Okay.

BS: So she was, in my opinion, through the information that she had told me, she knew who Ms. Moore was.

LS: So at the time that you are up at the apartment, not initially in front of it, when you were walking up to Tu and Moore, I'm sorry Tu and Brown, and you had made a statement about you didn't think it was the same person. Now we're talking about up at the apartment - while you're up there - other than you handing Officer Brown that field identification card with the note that you wrote on it -

BS: Correct.

LS: - did you communicate anything else to her either verbally or otherwise any additional information about the existence or non-existence of a warrant for Moore?

BS: I did not.

LS: In your interview on February 13 in the criminal component of this investigation, there's a part where you say, "So I came back and said, I don't think that's the guy, because the age and date of birth didn't match up." It's on page 259, do you recall saying that?

Rep: Can I step out for a moment.

LS: Mmm-hmm.

Rep: I have to take this call.

LS: I think we should stop please.

BS: Yes, absolutely. I'm just going to try to find it so that way we can start -

LS: I'm going to go off the record.

RECORDING BREAK

LS: All right we're back on the record. Mr. Stern is present with his client. We went off the record for about 3 minutes.

Rep: Thank you for that.

LS: You're welcome. So I was directing your attention to a statement about – that you had made in your earlier investigation interview – so I came back and said, *I don't think that's the guy because the age and date of birth didn't match up.* Is that something you said?

Case #2327 Officer Smith

Transcribed by MGM 9-12-13 Reviewed by BN 10.4.13

- BS: Yes.
- LS: And when you said that, where did you say that?
- BS: It was downstairs before we even went up and contacted Ms. Moore.
- LS: Okay, so is this the exact quote that you gave when you were describing about you were walking up to Moore and Tu after returning from your car?
- BS: I think it's probably as close to close to exact as possible.
- LS: So at some point when you're upstairs you ask Officer Brown, "Do you want me to arrest Mr. Hayes?"
- BS: Yes.
- LS: And what did she say?
- BS: I think she said We might as well take him or we might as well something to that effect.
- LS: Did you go ahead and arrest Mr. Hayes?
- BS: At that point I told Mr. Hayes that he was going to be placed under arrest for his warrant and asked him to come downstairs with me, so I didn't cuff him up or any of that up there. Actually, he just walked down with me to my patrol car outside and that's where I handcuffed him and began searching him.
- LS: So, is that the point in which you left Officer Brown and Tu while they were talking to Ms. Moore?
- BS: Correct.
- LS: And at the time that you left with Mr. Hayes, had you heard the word *warrant* come out of Officer Brown's mouth?
- BS: I don't recall that.
- LS: Had you heard Officer Brown make any statements to Ms. Moore about her having a warrant or her being placed under arrest?
- BS: I don't recall that.
- LS: What was the last thing that you remember them having an interaction about at the time that you departed with Mr. Hayes?
- BS: They were just just continuing on with their conversation where Officer Brown was trying to get Ms. Moore to get back on topic.
- LS: And at the time you depart with Mr. Hayes, do you see either Officer Tu or Officer Brown put any hands on Ms. Moore?

- BS: No.
- LS: So when you go down and you're interacting with Mr. Hayes, down, you put him in handcuffs, at some point do you get a call to go back to the apartment?
- BS: I heard Officer Brown get on the radio and I I think in my report that I said that she asked for Code 3 cover, but what I really recall is her say, "Can we get additional officers" or something to that effect.
- LS: And do you recall what her, you know, demeanor what how she sound?
- BS: Yeah, heightened voice, not her typical calm voice on the radio. It sounded like there was a struggle going on and she was requesting immediate assistance.
- BN: Did you hear any background voice?
- BS: I don't recall that.
- LS: How much time had passed from when you had left the apartment and gone down with Mr. Hayes to when you received that call for help or cover?
- BS: Estimating travel time in the elevator, five floors, walking outside, handcuffing, partial search, 3-5 minutes.
- LS: Did you then go back up to the apartment?
- BS: When when I heard them when I heard Officer Brown request additional units, yes.
- LS: What did you see when you got up there the second time?
- BS: When I exited the elevator there was no one out on the landing where I last saw them. There were multiple residents in other units who were sticking their heads out of their doors and as I came out of the elevator I noticed the front door to Ms. Moore's apartment was open and a couple of the residents were just pointing into towards the direction of her door.
- BN: At that moment did you hear anything coming from Ms. Moore's apartment?
- BS: Lots of yelling lots of yelling and screaming.
- BN: Were you able to ascertain who was yelling or screaming?
- BS: No.
- LS: What did you do then?
- BS: So I ran in ran into the doorway and that's when I saw Ms. Moore, Officer Brown, and Officer Tu.
- LS: And can you describe how they are positioned what they were what do you see?

Transcribed by MGM 9-12-13 Reviewed by BN 10.4.13

- BS: Yeah, it I believe that there was a mattress just inside the doorway, probably 20 feet maybe, 15 20 feet. It appeared that Ms. Moore was faced down on on partially on the mattress with her feet kind of hanging off. Officer Tu was to her right side. And Officer Brown was to her left side.
- LS: What were they doing?
- BS: Officer Tu was struggling with with what at that point I didn't realize it, but he had actually had her right hand cuffed and had it behind, behind her back. And Officer Brown was attempting to get control of her left arm.
- LS: At the time that you walked in and you saw Tu and Brown engaged with Ms. Moore, did either officer have control of Ms. Moore I mean under was Ms. Moore under the control of either officer?
- BS: Well, Officer Tu had had the right hand handcuffed and was holding the other end of the handcuff, so he had control of that arm.
- LS: But what was Ms. Moore doing during that time?
- BS: Kicking, bucking, screaming, flopping around, saying, "I'm not going to." I kept hearing it was such a short period of time Officer Tu kept saying, "Give us your arm give us your arm," and she kept saying I recall her saying "Fuck you. I'm not going to. I'm not going."
- LS: Okay.
- BN: At this point were you able to ascertain who was doing the yelling and the screaming?
- BS: At that point, yes.
- BN: And who was that?
- BS: Ms. Moore.
- BN: And you said that when you entered the apartment you initially observed Ms. Moore faced down on the mattress I just want to clarify when you say face down, what do you mean by that, the position or was her face -
- BS: No, no, no -
- BN: in the mattress?
- BS: she was laying prone on her stomach; her head was moving around; her face was not buried into a mattress if that's what if that's the way it came across, that was not the case.
- BN: No, I just wanted you to clarify that.
- BS: Yeah, yeah.

BN: Was anyone controlling or attempting to control her neck or head –

BS: No.

BN: - when you entered the apartment?

BS: No.

LS: When you first walked into the apartment and you observed what you saw, did you have any personal knowledge as to why the officers were trying to –

BS: No.

LS: - get Ms. Moore under control or put handcuffs on?

BS: No.

LS: What did you do at that point?

BS: I - I jumped in to assist, to try to get control of Ms. Moore.

LS: And why did you undertake the actions that you undertook at that time?

BS: Why did I undert-

LS: When you walk in and you see Officer Brown and Officer Tu engaged in this, you know, struggle with Ms. Moore, why did you then jump in? Why do you –

BN: Why did you provide assistance?

BS: Well I – as a police officer I have to assess the situation, and my believe is that these officers are – are taking action that is appropriate and consistent with the law. And this person is struggling with them and I'm going to do everything I can to assist them in placing the person into custody.

LS: At the time that you went to assist did you have any information to suggest to you that the officers were not acting lawfully or properly?

BS: No.

LS: No, you didn't?

BS: No, I did not have any information that made me believe they were acting unlawfully.

LS: Thank you. So what did you do?

BS: I went to Ms. Moore's left side and was attempting to assist Officer Brown in trying to gain control of her left arm.

LS: Okay. And what kind of physical force did you apply to Ms. Moore, can you just describe in detail what physical force you personally applied and where?

Case #2327 Officer Smith

Transcribed by MGM 9-12-13 Reviewed by BN 10.4.13

- BS: I I think I hooked her left elbow her arm was kind of under her body, so I didn't know if she had weapons; I don't know any of that, so I hooked my hand around her elbow and was trying to pull the arm out from under the body.
- LS: And did you were you successful eventually?
- BS: I I was not not at that point.
- LS: What happened? (inaudible) continue?
- BS: Yeah, the the struggle continued. She continued to buck around yelling, cussing, and so I told Officer Tu to let's try to roll her onto the left side of her body because her arm was under here and under her chest belly area and so I was trying to release the pressure of her body on the arm.
- LS: Were you eventually able to gain control of her arm?
- BS: Yes.
- LS: And was she eventually the other arm eventually placed in handcuffs?
- BS: Yes.
- LS: And who did that?
- BS: I did I believe. I was holding the arm; somebody else may have applied the actual handcuff.
- LS: Okay. Are you familiar with your department's General Order U2, the Use of Force Policy?
- BS: Yes.
- LS: And are you also familiar with the department's Training & Information Bulletin 234 which is called Sudden In-Custody Deaths?
- BS: Yes.
- LS: And could you just briefly describe any kind of training that you received regarding proper police techniques for using non-lethal force, specifically like handcuffing, restraining combative people?
- BS: Yeah, we the Police Department annually, maybe semi-annually, we do training in what's called arrest-control techniques.
- LS: And, you said semi-annually or annually?
- BS: Yeah, it's I believe it's annually but might be a little just a little bit more infrequent than that.

- LS: And have you had any have you had any kind of training on the topic of positional asphyxia?
- BS: Yes.
- LS: And could you describe that training?
- BS: There's been informal as well as formal training with basically do you want me to explain to you what it is or what –
- LS: Just generally what your knowledge of it is and what your training is and specifically if there's anything that you've been taught to avoid.
- BS: All right. From my training and experience physical asphyxiation is caused from someone being handcuffed and placed in a prone position on their stomach, belly area for extended periods of time or additional weight being added on them compressing the chest which compresses the lungs thus not allowing the person to breath.
- LS: Okay.
- BS: And what was the other part of that question?
- LS: If there's anything that you've been taught not to do or to avoid with regard to that issue.
- BS: Yeah, don't we don't leave people on their belly for an extended period of time; we don't apply additional pressure to their back stomach region when they are in that position.
- LS: During this time do you know how Officer Tu how he was positioned with regard to Ms. Moore, was he exerting any kind of physical pressure using his body weight?
- BS: Yes, he his legs-knee areas were on Ms. Moore buttock, leg, lower leg region.
- LS: And during this time what is she doing as you're continuing as you're continuing to try to get her in the second handcuff?
- BS: She's continuing to buck. With such force that Officer Tu is actually coming off of her body.
- BN: What's Tu actual position you said that his legs were on Ms. Moore's buttock area and lower leg, was he (inaudible)?
- BS: He was he was kind of kneeling. He had it's really hard to explain verbally how to do it or what he was doing. His knees and lower legs were on her buttock and thigh or hamstring areas, and he was kind of sitting in an upward position so he wasn't laying flat on her; he was kind of sitting up with the arm back.
- BN: Mm-hmm.
- LS: What physical force did you see Officer Brown apply to Ms. Moore?

- BS: She was when I first got there she was trying to get a ho– get control of her left arm.
- LS: And did you personally use any other force other than your hands or your body weight?
- BS: No.
- LS: And did you ever see Officer Tu or Officer Brown use any weapons other than their hands or body?
- BS: I did not.
- LS: After the handcuffs were placed on both of Ms. Moore's hands, what happened at that point?
- BS: At that point I turned around and noticed that there were other officers that were standing right behind me in the room, and I knew that I had Mr. Hayes in handcuffs in my in the back of my car, so I got up and told them, "I need to go make sure that he's okay and that he's still there."
- LS: Okay. What was Ms. Moore doing at that time?
- BS: She continued to kick and buck and yell and cuss at us.
- LS: After you helped to get her into handcuffs was there any reason that you didn't try to sit her up right or, you know, move her onto her side?
- BS: Not at that immediate moment.
- LS: You did not?
- BS: I did not.
- LS: Was there a reason for that?
- BS: I know that I believe Officer Brown at some point asked for the Wrap, which is a way of a restraining device that we use when people are combative even when they're handcuffed.
- LS: How would you describe Ms. Moore even when she's handcuffed was she submissive or what was she doing?
- BS: No, not at all, she continued to kick and buck and yell and pull away and continued her her combativeness.
- LS: Okay. Did you personally see any other officers apply any kind of physical contact or force to Ms. Moore after the handcuffing?
- BS: No, I believe Officer Tu was just holding her left arm or her right arm.
- LS: And did you ever see any kind of a Wrap device or a portion of being applied to Ms. Moore?

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BS	No.
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LS: When you were in Ms. Moore's presence did she make any statements about having any difficulty breathing?

BS: No.

LS: Any statements in your presence about being in any kind of distress or discomfort?

BS: No.

LS: At any time during your personal interaction with Ms. Moore did you personally apply any kind of pressure to Ms. Moore's back while she was positioned on her stomach?

BS: I did not.

LS: Did at any time, did you observe any other officer apply any pressure to Ms. Moore's back while she was on her stomach?

BS: I did not.

LS: At any time did you make an effort to monitor Ms. Moore's vital signs while she was on her stomach?

BS: I did not.

LS: Is there any reason why you didn't try to do that?

BS: Immediately once we had her handcuffed, I turned around and saw other officers and I went downstairs to be with Mr. Hayes.

LS: Can you describe how much time passed from when you initially walked in the apartment the second time to when Ms. Moore was successfully handcuffed on both hands?

BS: Fairly minimal amount of time. I would say a minute and a half to two minutes at most.

LS: Okay. Can you describe how Ms. Moore was positioned when you left the apartment to attend to Mr. Hayes?

BS: She was in the same position she was when we handcuffed her.

LS: And after you left the apartment, at some point does it come to your attention that an ambulance is being summoned?

BS: Yes.

LS: And how much time passed from when you left the apartment to when you heard an ambulance was being called for?

BS: Probably a minute to two minutes, maybe, maybe a little bit longer at the most.

Case #2327 Officer Smith

BN: When you left the apartment the first time, Officers Brown and Tu were still attempting to restrain Ms. Moore?

BS: When I left the first time?

BN: When you left the first time.

BS: No.

BN: No.

BS: There was no physical contact when I left the first time. When I left with Mr. Hayes to go downstairs –

BN: Now I – maybe I need to get clarity – I thought at one point there was physical contact that you initially engaged in and then other officers came and then you left and went down –

BS: That was –

BN: - to finish up your business with Mr. Hayes and then you came back in the apartment?

BS: I never came back after leaving.

BN: You never came back. Okay. So other than Officers Brown and Tu did any other officers – well, let me back up – what other officers were there on scene or arrived in the apartment?

BS: I believe – I'm gonna have to refer back again – I believe that when I was leaving I believe I saw Officer Mathis, Officer Gardner, and then Sergeant Phillips was coming in as I was going out. And she said, "I have the Wrap."

BN: And did any - other than Officers Brown and Tu because we pretty much covered them – what other officers physically engaged Ms. Moore, if any?

BS: None in my presence.

BN: None in your presence. All right.

LS: If I can just have a minute – I think we're done I just need to look through my notes here real quick.

Rep: Okay.

BN: Were there any civilians in the apartment when you were in the apartment?

BS: I was not aware of any other than Ms. Moore.

LS: How much time passes between when you're just getting Ms. Moore handcuffed and the other officers are coming in and then you leave?

Case #2327 Officer Smith

Transcribed by MGM 9-12-13 Reviewed by BN 10.4.13 BS: It was immediate. As soon as – as soon as we handcuffed, I turned around and saw other officers and I said, "I've got to get back. I've got somebody in my car." So I immediately stood up and started going downstairs.

BN: What was the duration of time would you say that Ms. Moore was in the face down or prone position while you were on scene?

BS: It was a minimal amount of time. Like I said before, from the time that I walked through the door to the actual handcuffing was at most a minute and a half.

BN: Minute and a half, thanks.

LS: So Officer Smith, I don't have any more questions, do you have anything?

BN: Did you or Officer Brown ever discuss the Crisis Intervention Team before you entered Ms. Moore's apartment?

BS: Not that I recall.

BN: That's all I have.

LS: Do you have any –

Rep: I certainly don't.

LS: So that concludes our interview. It's 7:15. Thank you.

STATEMENT OF OFFICER MATHIS PRC COMPLAINT #2327

LS: Lucinda Simpson, PRC Officer Bm: Officer Mathis, Subject Officer

HS: Harry Stern, Legal Rep.

LS: I'm here with subject Officer Brian Mathis. This is Lucinda Simpson, PRC Officer. Today's date is August 29, 2013. The time is 4:00 p.m. Officer Brian Mathis is badge #80, is that correct?

BM: Correct.

LS: And also present is his counsel Harry Stern. Officer Mathis is subject officer on complaint #2327. Officer Mathis, you are here under the provisions and protections of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights. Pursuant to the Lybarger doctrine, because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Mathis and Mr. Stern are you aware that this interview is being recorded?

HS: I do.

BM: I am.

LS: And Officer Mathis, would you answer the questions today truthfully and to the best of your ability?

BM: I will.

LS: Officer Mathis, you're currently employed as a police officer with Berkeley Police Department, is that right?

BM: Correct.

LS: And how long have you been so employed?

BM: Fifteen, in my fifteenth year.

LS: Any other prior police experience?

BM: No ma'am.

LS: And can you describe the assignments and positions that you've held during your career?

BM: Patrol, I've been a member of drug task force. I'm a current member of SRT. I'm also a field training officer, I was a member of CMT when it was active. I can't think of any other assignments that I've held.

Case #2327 Officer Mathis

LS: SRT, is that a SWAT team?

BM: That is the former (unintelligible) - the new name for it is SRT. (Unintelligible) if you want to call it that.

LS: Okay. Were you on patrol on February 12th, 2013 just before midnight?

BM: Yes, I was.

LS: Now are you familiar with something called the Crisis Intervention Team?

BM: I am.

LS: And as of the date of February 12th of this year had you had any trainings or briefings about it?

BM: Not to my recollection at that time.

LS: Were you familiar with a general order that had been issued sometime in mid January about the Crisis Intervention Team?

BM: I'm familiar with it; I don't recall the exact date and month but I'll trust you on the dates.

LS: Do you want to see it?

BM: No.

LS: To your knowledge around February 12th, was the Crisis Intervention Team operational – was it functioning?

BM: Not to my knowledge.

LS: Were you a member of the Crisis Intervention Team?

BM: I am not.

LS: Are you now?

BM: I am not.

LS: Okay. And to your knowledge, you working team 4 on February 12?

BM: Yeah, I guess that was team 4 in that time (unintelligible) which is the old team 4, so if that's what it was at that time.

LS: Whatever team you were working on February 12th, do you remember if there were any other officers that were Crisis Intervention trained to your knowledge?

BM: I don't recall.

Case #2327 Officer Mathis

- LS: Okay. So, on February 12 just before midnight or around that time did you receive any kind of call for assistance?
- BM: I heard a call go out for extra additional officers needed.
- LS: Was there any kind of a code associated with it?
- BM: No, she actually put out *We need more* I think it was "I need more officers here" or something...but there was also a tone in the way the officer put it out.
- LS: Okay, and would you describe that?
- BM: In a kind of in a midst of a struggle there's a certain you get used to hearing different people's voices, especially when you work with them for periods of years, I work with, this was Officer Brown's transmission that she put out, and I recognized the difference in the tone of her voice.
- LS: And what was being conveyed to you by that tone of voice?
- BM: There was a struggle. She was involved in some type of struggle that was going on.
- LS: Did you hear any background noise or any statements, any -
- BM: No.
- LS: And can you describe for the record what your height and weight was at the time that you responded to that call?
- BM: Not really ever changed; I'm just over 6'3" and I weigh about 245.
- LS: Did you have occasion to go to 2116 Allston?
- BM: Yes.
- LS: That was in response to that call?
- BM: Yes, I pulled the call up to see where she was.
- LS: And did you see any other officers arriving when you first got there?
- BM: Not as I first got there I when I first– I heard other cars coming, so I know the building, I knew where we were I don't recall exactly the number of room, but I knew we had to go up the elevator, so I got the elevator opened, blocked it, blocked the front door open, and then two other officers arrived, so that we were all able to go up together.
- LS: And who would that have been?
- BM: It was Officer Gardner and I want to say Kastmiler.
- LS: And did you have occasion to go into a particular apartment?

Case #2327 Officer Mathis

- BM: Yes.
- LS: And what did you see when you got there?
- BM: It was there was some type of struggle going on in the you know I think I've (laugh) you guys have read my my statement so I've pretty much described it but there was some type of struggle going on with a with an individual three officers struggling with to control an individual on the ground.
- LS: And those three officers were whom?
- BM: Well, I knew Officer Brown was there and I recognized one of them as Officer Tu, and at the time I did not know who the other one was, but I later found out that that was Officer Smith.
- LS: And the struggling that you're describing, can you just go by a little more detailed about that, what you're seeing?
- BM: The thing that I immediately noticed and and I've sorry, I've been down this road more than once, so I'm not particularly pleased in going back through it all over again. An individual was kicking like in a swimming kicking motion, bucking officer, like Officer Tu was lower kind of down the lower extremities. I could see him because he's the taller I just recognized him for some reason, and he was he was getting kicked being kicked by this individual.
- LS: When you say kicked are you talking about like in an upward fashion?
- BM: Kind of, kind of, person's person's face down so they're they're like kicking back with their feet and kicking his (unintelligible). And by kicking up it's removing his body we try and hold, you know, keep people from moving around. We're trying to control the situation and this individual by their kicking motion, like you would swim or were aggravated like if you have somebody on your back and you're kicking them, that's what they were doing, and they were doing it rather well.
- LS: At the time that you entered the apartment did you have any personal knowledge as to why the officers were engaging the struggle that they were engaged in?
- BM: No.
- LS: And what did you do at that point when you walked in?
- BM: I went to control the legs.
- LS: And why did you undertake that action?
- BM: Because that by the person's actions it was they weren't able to control this individual they were able to thrash around, by controlling the legs you tend to control their thrashing.

- LS: Were you able to tell if any handcuffs had been applied to both hands at that time?
- BM: No, I couldn't see any of that.
- LS: Can you describe the subject that the officers were struggling with, is that a person that you later found out to be named Xavier Moore?
- BM: I I knew the person as Xavier Moore. I've met him as I knew him a him as he had identified himself to me prior one time and then I know from other officers responding there, so I knew who most I didn't know it was him going in but when I saw him on the ground I knew that I was pretty much knew who it was.
- LS: Okay. So I'm just going to refer to Xavier Moore as Ms. Moore from now on if that's all right.
- BM: That's fine but I might also make some mistakes so I apologize.
- LS: No problem.
- BM: don't mean anything by it, it's just how I've referred to him.
- LS: So when you came in and you saw Ms. Moore, where was she? Was she on anything?
- BM: I guess at the time it was difficult to tell but it looked like it was maybe a Futon mattress or something of that nature.
- LS: And can you describe I think you had previously described a little bit about it the thickness of it, in an earlier interview, do you remember was it like I thick mattress, something thinner?
- BM: I don't know, Futon mattresses, but to my best recollection because I helped move it later, so I know that it was a Futon it's a standard I don't know how else to I've never owned a Futon I've moved a few of them for friends, and in this case I actually helped move when I came back up with the firefighter to assist clearing that room I actually moved that mattress out of the room. So I know it was a foldable not very thick just I don't know 3 4 inches maybe, it's not that big.
- LS: Okay.
- BM: But you can fold it up, I mean like you can roll it.
- LS: Okay, and was it elevated, was it on the ground?
- BM: It was on the ground.
- LS: Okay. So when the struggling is going on, this is approximately how far off the ground on top of the Futon?
- BM: They're laying on it. It's so the mattress is on the ground everybody is on the mattress.

- LS: So we're not talking about a good traditional bed that would be raised up maybe three feet or so.
- BM: Not that I recall seeing, no.
- LS: Okay. And could you describe how Ms. Moore's body was positioned on the Futon?
- BM: Face down I mean I I know face down I shouldn't say face down but chest down because the legs were back the feet the toes were pointing towards the ground.
- LS: Is face down also I'm sorry that is an important distinction that you raised -
- BM: (Inaudible)
- LS: Is stomach down also called the prone?
- BM: Yes.
- LS: And was her full body on the Futon or half on half off, can you describe that?
- BM: I don't recall exact how much most of it I would say most of it was more on the mattress than less, like maybe, maybe the feet where I was were off but that's not a fact I remember during that moment.
- LS: Okay. Could you describe if you heard the officers saying anything to Ms. Moore when you first arrived?
- BM: There there was a lot of yelling and screaming, I could distinctly hear officers giving commands to stop resisting. Who exactly was saying it I I couldn't tell you. I also heard Ms. Ms. Moore yelling and screaming, again, not not knowing what was being said, I couldn't tell exactly.
- LS: Can you describe what you did when you went to go and have contact with Ms. Moore's feet or ankles?
- BM: So I tried to control the ankles at first just by holding the feet down and I got kicked off pretty pretty quickly. So I then repositioned and I went back in and took one and crossed it over, the second, so it's a way that where I can put more pressure on the one to then control the second one. So rather than trying to use two hands on one on each leg, I can help with focus on my on one. And I don't remember how all of that, but I ended up having them crossed and was able to maintain maintain my control.
- LS: During this the second time after you reacquired a grip on the ankles and did the crossover motion, did you have occasion to help to use your knee in any manner to try to secure –
- BM: The only time I would've used my leg or knee sometimes I'll use I'll use my body weight to hold that down would've been I know you're going to ask about the applying of the ankles strap from the wrap, would've been so I can use that and use my

hands and I'll use – but – I don't know that I necessarily used my knee. A knee wouldn't be the right way to do it, because you're – it's not as efficient – you're better off if you're using your whole shin or your entire leg or your body on it, because you're trying to hold that thing from moving. A knee would – a knee would allow the ankle (unintelligible) just to slip or move, and you'll lose control, so I couldn't say that I would have used my knee.

LS: If I can show you a transcript from an earlier interview, I think it was the criminal component – page 10 of your interview, and it's marked 180 in mine.

BM: Okay.

LS: It just looks like on line 421 there's a statement that you made there – I want to just allow you to refresh your recollection about this statement here.

BM: Okay, so knee, I say *knee* in that statement but knee, shin area, it's not - it's not like you're putting a knee - I'm trying to explain it but it's - I used my leg, my knee, my whatever I have there, but it's not like your pointing your - the point of your knee into something, it's not how you really do it.

LS: Okay.

BM: I understand that is how I said it there, but it's still – I could demonstrate it and it would make it that you would understand why it – why putting the point of a knee it wouldn't make sense in doing that, because it will slip out.

LS: Okay.

BM: But, yeah, but I used – used a portion of my leg I guess I say here a knee, and I used a portion of my leg so I could use, my hands were free so then I could apply the strap.

LS: Okay.

BM: Okay.

LS: And the area where you were applying – we'll call it your knee, your shin, whatever part of your leg it was – what part of Ms. Moore's body was it being applied to?

BM: Somewhere in the – I mean – to be specific, I don't recall exactly, I would have to say it's in the calf, calf shin area -

LS: Okay.

BM: - would be my, but I'd be guessing.

LS: Okay.

BM: It's -

LS: Are we at least talking about can you say with certainty whether it was -

Case #2327 Officer Mathis

BM; No, I can't say with certainty.

LS: - below the waist or -

BM: - It happened how long ago?

Rep: Did you hear her question?

BM: Sorry.

LS: Could you say with any certainty whether it was below the waist or above the waist?

BM: Oh, it's definitely below the waist.

LS: Okay.

BM: It's just. I'm sorry. I apologize.

LS: And if we need to take a break we can do that too.

BM: No, I just -

LS: At some point did you make a request to, you know, ask for a particular tool or something you could use to -

BM: I saw Sergeant Phillips come in with a wrap in her hand and I asked for the ankle strap from the wrap.

LS: Okay. And did someone provide it to you?

BM: Sergeant Phillips provided me with the ankle strap from the wrap.

LS: And does it have to be like prepared or a loop put in it or anything beforehand?

BM: It is used to hold as you have in your PRC 1 photo there. The ankle strap is actually being used – actually this one is (inaudible). That's the strap that is holding the whole thing together, so when it is put into the bag it is rolled up – it is rolled up so that it – so when you have – when you have the wrap – this is PRC 5 – that's what I'm pointing to.

LS: Okay.

BM: The knees – this is on the inside and all these straps are velcroed together – it is then rolled up and then the ankle strap, which is then back to PRC1 is used to hold the whole thing together. So when it comes out of the bag, it will come out looking like this, always.

LS: Okay.

BM: That's the way it's supposed to be, so that when – whatever officer takes it, when they unstrap that, it will then come out looking like that, okay.

- LS: And looking like that –
- BM: Like 2 PRC2.
- LS: It's 2. All right. And just for the record, when you were looking at 1, the strap is, there's like 3 stripes, and the one you were pointing to is in the middle?
- BM: Actually, there are 3. These are 3 straps that are attached to these are the straps that, they're all pieces of velcro and they are just doubled-back over each other.
- LS: Okay.
- BM: Okay, so that they're not just folded all over each other, so that they're, each one is kept together, so that we can pull one out at a time so it ends up being nice, easy to you know it's not tangled up.
- LS: Okay.
- BM: This is a separate piece.
- LS: And the one you're pointing to is in the middle?
- BM: It it –it can be in the middle sometimes people put it wherever, but it is there to hold that that (inaudible).
- LS: At least PRC1 it's in the middle.
- BM: Yeah, it it's in the middle.
- LS: All right. And then if I can show you PRC3 above the feet here this is just a demonstration is this yellow object with a buckle on the left side is this the wrap that the strap you're talking about?
- BM: That is. Is not applied correctly, but that's it.
- LS: All right. Could you just briefly describe the training and experience you have with regard to using the wrap this wrap device including the ankle strap?
- BM: As long as I can remember, we've been trained we get periodically trained from our FT unit on how to use it. I've been trained how to use it in I had it applied to me numerous times because I'm a big guy, so they like to use me as an example. I couldn't tell you how many times over the years maybe once a year once, quite a lot, so I'm very familiar with it.
- LS: Okay.
- BM: And I have used it, I work up on Telegraph, so every once in a while do get occasion to use it.
- LS: Okay. And prior to February 12th, how many times would you say that you had personally used it had to apply it on a person?

Case #2327 Officer Mathis

Transcribed by Maritza 10-1-13 Reviewed by LS date 10-23-13

- BM: Over my career couple dozen, maybe maybe more. A couple of dozen would be an easy easy guess.
- LS: All right.
- BM: If not more.
- LS: And are you familiar with training I think it's a GO or hang on a minute– are you familiar with Training & Information Bulletin 247 titled the wrap restraint?
- BM: If that's the one that we've been read and been trained off of, then yes.
- LS: Okay. With regard to this wrap restraint, is there any protocol for using the ankle_wrap by itself? Is that something that you have been trained that you can do just using the strap by itself and not the whole device together?
- BM: Well, it's not necessary to to apply if you put the ankle strap on and you gain the control what you're attempting to gain in a volatile situation, then there's no need to go on with the rest of it. By applying the rest of the wrap, it makes it easier potentially to transport somebody or to keep them controlled because it locks them into a an L seated position which (unintelligible) now easy to pick up and easy to get into a vehicle and so forth. But there's nothing set that you have to apply it because you start with one piece that you have to continue with the rest of it.
- LS: Okay. So, were you in fact able to get the ankle strap onto Ms. Moore's ankles?
- BM: Yes.
- LS: And was anyone assisting you with that?
- BM: Not that I recall I don't think in any of my I know there's another officer listed in the complaint, but I don't recall him helping me, so and if somebody else was reaching in there, I wouldn't be able to tell you whose hands those were. If they said something later, I don't know, but as far as I'm concerned I did by myself. I'm proficient at it.
- LS: Did you have occasion to engage in any checking of the tightness of the strap after you were able to get it on?
- BM: No...I mean there's no it's a wide strap that goes on. Once you put it on, it's just meant to keep keep the feet together and and once you apply it there's no it's not like a rope or something, that's like a pair of handcuffs that needs to be readjusted if that's what you're asking. It's not something of that nature. Once you put it on you once you put the Velcro over, it stays that, it maintains that. It's not something that is going to be too tight or too it's not something you re-adjust or double lock or do anything like that.
- LS: Okay. If I can direct you to I can show you page 12 of your earlier interview it's marked 182 in mine, and I'm going to direct you to page sorry, lines 504 through 513, if I could ask you to review that and it is on the topic of applying the ankle strap and whether anyone else was assisting you with that.

- BM: This was all so long ago. If that's what I said, I said it I don't Ma'am I can't you're asking me to remember something that happened in February.
- LS: Okay.
- BM: I I don't remember exactly. I have done it so many times myself; if somebody else helped me and and that close to after the incident I said somebody else helped me, okay, so somebody else helped me.
- LS: Would your memory be better closer to the incident than it would be today?
- BM: I would assume so.
- LS: Are you familiar with the BPD general order U-2 the use of force policy?
- BM: Yes.
- LS: And would you briefly describe your training experience that you've well, I should say just training for now as it relates to proper police techniques for using non-lethal force, an example would be physically restraining a combative person, getting someone handcuffed, things like that training you've received in that regard.
- BM: I've been trained on it since day one we've been here. And we also had a T and I back which is no longer since we've been here since the first day I've been here it's been the same it's it's at every firearms training, at every, I mean it's we go through it all the time.
- LS: And are you also familiar with the BPD Training & Information Bulletin 234 titled Sudden In-Custody Deaths?
- BM: I am not as familiar with that one at all.
- LS: Have you had any training on the topic of something called Positional Asphyxia?
- BM: Yes.
- LS: Yes, you have had such training?
- BM: I am familiar with it. I think we discussed it earlier.
- LS: Can you describe when you had that training or what was involved in it?
- BM: We've talked about it any time you're doing any type of handcuffing or when we do because you prone people out to do handcuffing or you've been in a struggle with somebody and you can't cuff them, and I couldn't tell you how many different trainings we've had or go over how many years we've done it. But you always roll somebody you know you try to roll somebody on their side as soon as possible or get them to sit up when when possible depending on the situation.

- LS: Okay. In the context of that subject, have you been trained about anything not to do actions not to engage in or to avoid?
- BM: I don't know what you're getting at but not that I'm familiar with.
- LS: So with regard to the issue of positional asphyxia, have you been received any training on, you know, how areas not to apply pressure when someone is in a prone position?
- BM: Well if you're referring to choking would be the only thing any type of things around the neck would be the only thing that we are not allowed to do.
- LS: Okay. What about any kind of pressure to someone's back area behind the lungs, when they're prone?
- BM: During a struggle?
- LS: When they're just left prone not I'm not talking about a struggle I'm saying just when they're left prone.
- BM: I don't quite understand your question because you're either engaged once you have control of that subject, you don't maintain you don't you're not you don't continue to sit on them.
- LS: Okay.
- BM: If you're still if you're still putting pressure on them or still holding them down, then you don't have control of that situation yet.
- LS: Okay. So, once you do have control of the situation you had mentioned that the practice is best to roll them over, or put them, you know, seated.
- BM: If possible. I said as I said depending on what the situation is.
- LS: Okay. Is it something that is situational what is the unique facts of each individual case that you're facing?
- BM: I would say yes, I mean you have to every situation is different sometimes it could be you're in a fight in the middle of Telegraph and you you've got a situation up there that you have to maintain keep that person down because maybe they by sitting them up they incite the rest of the crowd or something, and so you're gonna keep them in a controlled position. It depends on each situation.
- LS: Okay.
- Rep: As a general practice, though, are you taught to avoid putting extra weight on somebody's upper body particularly behind the lungs when they're in a prone position once they're under control.
- BM: Oh yeah, once once you have control of that individual, you're going to take as much of the pressure off as possible.

- Rep: Why is that if you know?
- BM: Well, because you don't want to induce the positional asphyxiation. You don't want to you don't want to cause them any extra discomfort or harm you're just trying to gain control of a of a volatile situation.
- LS: In your best approximation, how much time passed from when you arrived to the apartment and when you were able to secure Ms. Moore in the ankle strap?
- BM: I I don't recall exactly it happened it didn't take very long, but it did go on for a bit I mean it wasn't even in the time that it takes for that elevator to go up and down for the next officers just to be able to show up would be minutes, so we were in a struggle for a number of minutes, but I couldn't give you numbers not at all.
- LS: Did you ever hear Ms. Moore make any statements at any time in your presence that she was having difficulty breathing?
- BM: No.
- LS: No, you did not hear her make such statements?
- BM: I, I'm sorry, I did not hear anything of that nature.
- LS: Okay. Did you ever hear Ms. Moore make any statements at any time in your presence that she was experiencing any kind of medical distress?
- BM: I just heard yelling and screaming I don't I don't recall any specific statements at all.
- LS: Did you personally apply any pressure to Ms. Moore's person above her waist while she was in a prone position?
- BM: No. No.
- LS: At any time did you observe any other officer applying pressure or contact with Ms. Moore's let me rephrase that at any time did you observe any other officer apply pressure to Ms. Moore above her waistline in the back area?
- BM: No, I did not.
- LS: At any time did you make did you personally make any efforts to monitor Ms. Moore's vital signs during your interaction with her?
- BM: No.
- LS: And may I ask why not?
- BM: Somebody asked for spit hoods uh asked for a spit hood and I keep them in the front compartment of my duty bag in the front seat of my car and said, "I have them," and was told "Go get them," so I ran down to go get them.

- LS: After you were successful in putting on the ankle strap on Ms. Moore, what if anything did she do once that was applied –the situation change at all did her demeanor change her resistance?
- BM: I wasn't getting kicked anymore, but that's I'm facing the ankles, I don't know what's going on up the top, I just remember I wasn't getting kicked anymore, so I wasn't I didn't have to I had control of the ankles at that point.
- LS: Okay,
- BM: (Inaudible) the legs and ankles.
- LS: But at some time around when you were able to put the ankle strap on, you had mentioned someone asked for a spit mask or a spit guard I should say.
- BM: Mm-hmm.
- LS: Do you remember when that was in relation to when you were able to get the strap onto the ankles?
- BM: No. It it wasn't very very far after that. It seemed like it all like once I got the ankles restrained, it it all seemed to kind of you know, things kind of calmed down.
- LS: So were you able to see what was sort of happening at the top end or why someone would've been asking for that spit guard?
- BM: No. I was facing away.
- LS: During the time that you were interacting with Ms. Moore, do you remember how her face was positioned, if that's something you remember or saw?
- BM: I was facing away; I didn't see.
- LS: Okay. At the time that you did you in fact depart the apartment to get a spit guard?
- BM: Yes.
- LS: And at the time that you did that, how was Ms. Moore positioned was she still proned?
- BM: I don't recall exactly. I didn't turn around and look and survey the situation, I just got up and went.
- LS: What was the positioning of the other officers when you left the apartment?
- BM: I don't know where everybody was. There was a lot more people in there by the time I got up to go.
- LS: At the time you left the apartment to get the spit guard, was there still can we characterize it was there still like an active struggle going on can you –

- BM: No.
- LS: There was not?
- BM: Didn't didn't appear to be I mean as I said the legs had, the demeanor of the situation had kind of changed, so.
- LS: At the time that you left the apartment to get the spit guard, did you hear Ms. Moore making any statements, saying anything, making any noises?
- BM: No, I I didn't hear anything. There were a lot more of us in there than there were so as I said there was I didn't hear her say anything.
- LS: And prior to you leaving the apartment, was there any effort that you saw to roll Ms. Moore on to her side?
- BM: I I, again, I was facing away from them and once I offered that up, I left so I don't know what they were doing.
- LS: Was there any reason why you didn't try to roll her on her side before you left?
- BM: There were plenty of other people there that had that were working on the top that had been applying the handcuffs and doing whatever else they were doing up there when somebody asked for spit hoods, I I offered up plenty of people there.
- LS: And did you in fact go down to your patrol car?
- BM: Yep.
- LS: And when you went down there did you learn any information to suggest that Ms. Moore's condition had changed in any way?
- BM: Yes, I heard the broadcast that they had started CPR.
- LS: And in your best approximation how much time passed after you left the apartment when you hear that?
- BM: I wouldn't be able to guess, so, you have it in my prior statement. I I don't recall at this moment.
- LS: Okay. When you returned upstairs did you get back upstairs actually?
- BM: Yes, I did.
- LS: And when you went back up there, did you have occasion to see how Ms. Moore was positioned at that time?
- BM: I escorted BFD back up and Ms. Moore was now Officer Tu was applying CPR and she was now on her back.

LS: And prior to you leaving the apartment did you have any –

BM: Which time, the first time or now the second time?

LS: The first time. The first prior to you leaving the first time when you went to get the spit guard, did you have any reason to believe that Ms. Moore was having difficulty breathing?

BM: No.

LS: You had mentioned at some point that Officer Gardner and Kastmiler were present.

BM: I'm sorry.

LS: You had mentioned that Officer Gardner and Kastmiler –

BM: Kast – Kastmiler.

LS: Kastmiler.

BM: Kastmiler, yeah, he – they came up the elevator with me. I held the elevator and all three of us came in together.

LS: Okay. Can you describe what they did at the scene?

BM: No idea.

LS: And the officer that helped to hold the ankles while you put on the ankle wrap –

BM You showed me my statement; I don't know who that was.

LS: Okay.

BM: They were just a set of hands, I guess, I don't recall.

LS: Okay. Do you recall where Officer Brown was positioned during the time you were putting that wrap on?

BM: Nope – upper body. Just upper body – somewhere behind me – somewhere up top – I don't know where.

LS: Okay. And also present at the scene was Sergeant Phillips, is that right?

BM: Correct.

LS: And Sergeant Cardoza?

BM: Yeah, I don't know exactly when he came in, but I know he was there.

- LS: Okay. And who was which one was sort of the senior sergeant at the scene or I don't know what their relationship is to the team or, there's two sergeants, so.
- BM: They're the they were the team 5 or whatever team that was working that night, 5 or 7. I can't remember, depends on the night it was. And so they were the they were the dogwatch team sergeants. They weren't my team Sgt., or no Cardoza was, Cardoza was my team sergeant at that time. But I don't know who was who took see you're asking who was in charge of the scene I don't recall which one. Actually I took direction from (unintelligible) point.
- LS: Do you have any reason to believe that one of the two sergeants was the one that assisted you when you were putting on the wrap?
- BM: I don't recall. It was a set of hands.
- LS: Do you recall whether they were male or female?
- BM: I really don't know. It's just a helping set of as I said at this point I don't remember there were hands, so apparently there were in my prior statement, so. I don't know.
- Rep: It's in the report as well.
- BM: Is it? I have done it so many times that it's just -
- LS: During the time that you were applying the ankle strap, did you have any reason to believe that Ms. Moore had actually been handcuffed?
- BM: I I had no idea.
- LS: Do you recall in your previous interview stating at one point you had heard someone say, "I got it," as if Moore had been handcuffed?
- BM: I don't recall; I may have, but I don't recall saying that. It may have there was a lot of things being said and we do talk it out– I got one, or I mean it very well could've happened.
- LS: So when you're putting on the ankle wrap did you know for certain whether cuffs had been applied or not applied?
- BM: No...no.
- LS: At sort of the end of this event, I'll call it, did you have occasion to hear Officer Brown make any statements about why they were trying to take custody of Ms. Moore?
- BM: That's when she had mentioned it was for a warrant.
- LS: Do you remember specifically what she said?
- BM: I'm sure it's been mentioned somewhere. I want to say something like it was a 10,000 warrant or something like that, but I I don't I don't recall if I exactly what she said. But I remember them talking about the warrant.

Case #2327 Officer Mathis

Transcribed by Maritza 10-1-13 Reviewed by LS date 10-23-13 LS: If I can show you page 27 of your statement in the criminal investigation, it's marked 197 in my lines 1167 – 1173 I don't know if that would refresh your recollection at all but feel free to look at it.

BM: It says a \$10,000 warrant.

Rep: Did that refresh your recollection?

BM: Yes.

Rep: Okay. So what you recall.

BM: That it was all over a \$10,000 warrant.

LS: I have no more questions. Do you have anything to add Mr. Stern?

Rep: I don't.

LS: Thank you for being here Officer Mathis I appreciate your time today.

STATEMENT OF OFFICER GARDNER PRC COMPLAINT #2327

LS: Lucinda Simpson, PRC Officer TG: Officer Gardner, Subject Officer

HS: Harry Stern, Legal Rep.

LS: Good afternoon, my name is Lucinda Simpson. I'm the PRC Officer. Today's date is October 4, 2013. It's about 1:05 p.m. And I'm here with Officer Gardner, Badge #121, is that correct, sir?

TG: Yes.

LS: And also present is Officer Gardner's Counsel Mr. Harry Stern.

Rep: Correct.

LS: Officer Gardner is a subject officer on complaint #2327. Officer Gardner you are here under the provisions and protection of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the investigation and interview under threat of discipline. You cannot be required to waive 5th Amendment rights. Pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Gardner and Mr. Stern are you aware this interview is being recorded?

TG: Yes.

Rep: Yes.

LS: And Officer Gardner, will you answer the questions today truthfully and to the best of your ability?

TG: Yes.

LS: Officer Gardner, you're employed as a Berkeley Police Department police officer, is that correct?

TG: Correct.

LS: And how long have you been employed in that way?

TG: Combined total of about 8-1/2 years.

LS: And any prior law enforcement experience?

TG: No.

Case #2327 Officer Gardner

Transcribed by MGM 10-29-13 Reviewed by BN 10.30.13

- LS: And can you just briefly describe some of the positions and assignments you've held including any special training?
- TG: I've been a drug task force officer; I attended a 2-week search warrant school, and a two week drug recognition or a 1-week drug recognition school as part of that. I've been a bike patrol officer; attended a 40-hour bike-patrol training program at Sacramento Sheriff's Academy. I completed the 6-month Post Certified Academy, and a 5-month program as part of that when I was originally sworn in. I've attended different departmental trainings for whatever policies were implemented; I don't have a recollection to specifics, but uh -
- LS: And were you on patrol on February 12 of this year just before midnight?
- TG: Yes.
- LS: And if I can first direct your attention to something called CIT, are you familiar with what that is?
- TG: Yes.
- LS: What is that?
- TG: That's our Crisis Intervention Team I think the acronym is.
- LS: If I can show you General Order C66 called the Crisis Intervention Team, are you familiar with that General Order?
- TG: Yes.
- LS: Looks like the date of issue is January 24, 2013, is that what the order says?
- TG: Yes.
- LS: Prior to February 12 of this year had you become aware of the existence of this general order?
- TG: I don't have a specific memory, but I believe so.
- LS: Okay, do you remember how you were made aware of it, like a briefing or a training?
- TG: It was probably a briefing –
- LS: Okay.
- TG: where they announced the formulation of it might have even been impending for all I know.
- LS: Were you trained on any specifics of the expectations of how to use it or what the expectations were of the officers with regard to this order?

- TG: My recollection is is that it hadn't been formulized yet –
- LS: Okay.
- TG: like the team hadn't been picked.
- LS: Okay.
- TG: That's what I remember.
- LS: And the questions I'm going to ask you about this general order all relate to, you know, before or at February 12th of this year.
- TG: Right.
- LS: So on February 12th of this year, were you a CIT officer?
- TG: No.
- LS: Did you know of anyone on the team that you were working on who was a CIT trained officer?
- TG: Not that I'm aware.
- LS: And as of that date were you aware whether CIT, as it's described here in the general order, whether it was operational?
- TG: I don't believe it was but I don't I can't be sure.
- LS: And if I can direct you back to the evening of February 12th this year, just before midnight, did you have occasion to receive a call for assistance?
- TG: Yes.
- LS: And can you tell me what you were made aware of?
- TG: There was a call for help. Officers needed additional cover and I heard the sounds of a struggle, a violent struggle, with in the background on the radio.
- LS: You could hear that?
- TG: Yes.
- LS: Okay, tell me what you heard.
- TG: Just, you know, you become familiar with certain noises that are accompanying a struggle and whether it's thumps or just the rasping of the radio and the officer out of breath, but it was clear that someone was in a struggle for their life it sounded like an officer.

- LS: Were you able to ascertain if that was an officer in particular?
- TG: Well, no, I mean what do you mean?
- LS: Were you able to ascertain maybe who was making noises?
- TG: Oh yeah, well, I knew the officer was transmitting -
- LS: Okay.
- TG: was Gwen Brown.
- LS: Okay.
- TG: Yeah.
- LS: Did you hear noises in particular from her?
- TG: Well, like I said, I mean I don't I can't be specific about what I heard it just was, you know, sounds of the radio, you just understand the radio traffic, the nuances have it when someone is in a fight, there are certain sounds it's the transmission is cut off. There's quick breathing; there's, you know, the rasping of the radio against fabric when the mike is keyed, that kind of stuff. There might have even been thuds in the background; I don't know.
- LS: Were you able to make out any words?
- TG: Just I think it was, "Send us some cover" -
- LS: Okay.
- TG: something like that.
- LS: Did you respond?
- TG: Yes.
- LS: Any particular code that you used?
- TG: Yes, Code 3.
- LS: And why did you do that?
- TG: Because I knew that someone was in a what sounded like an intense struggle for well emergency they needed emergency help.
- LS: And did you have occasion to arrive at 2116 Allston in Berkeley?
- TG: Yes.

- LS: And did you see any other officers there when you arrived?
- TG: Yes, but I don't remember exactly if it was outside or if I saw everybody upstairs. There were there were other officers who kind of funneled in the doorway with me, I think we went upstairs.
- LS: (Inaudible) your narrative refer to your earlier statement in the criminal case?
- TG: Mm-hmm.
- LS: Yes?
- TG: What what's that?
- LS: Would it refresh your memory to look –
- TG: Sure.
- LS: at your earlier statement? If I can direct you to Page 6, Line 266. Does that refresh your memory at all?
- TG: Yeah. So, Officer Mathis and Officer Kastmiler.
- LS: Were there when you arrived?
- TG: I don't know if they were there when I arrived or I was there first, but we converged -
- LS: Okay.
- TG: and went upstairs.
- LS: Did you have occasion to enter into an apartment?
- TG: Yes.
- LS: And can you tell me what you saw when you got in there?
- TG: I saw several officers including Gwen Brown in a what looked like a fairly intensive struggle trying to handcuff a violently resisting individual.
- LS: Can you describe what this person looked like, the person that they were trying to handcuff?
- TG: They were either, you know, to my first impression, an African-American or a Pacific Islander male, I thought, and quite large, 350 to 400 pounds. It seemed from the struggle that the officers were not even close to getting control of this person, they were kind of getting flung around.
- LS: And apart from Officer Brown, you mentioned other officers can you name them?

- TG: Okay, so Gwen was there, and Ken, too, and I think Brandon Smith.
- LS: The person that those officers were struggling with when you first arrived, did it later come to your attention that that person's name was Xavier Moore?
- TG: Yes.
- LS: And for the purpose of our interview today, would it be all right if I refer to Xavier Moore as Ms. Moore?
- TG: Sure.
- LS: How was Ms. Moore positioned when you first entered?
- TG: I think like partially on her side but kind of face down at the same time, because they were trying to get the handcuffs on her from, you know, put her hands behind her back.
- LS: When you first walked in and saw the struggle what was Ms. Moore doing? How was Ms. Moore physically –
- TG: My recollection was like kind of trying to lift up, you know, in getting to kind of a hands and knees position, and the officers were struggling to hold her down.
- LS: And when they were struggling to hold her down, how were they doing that? What were you seeing them do?
- TG: Just, you know, grabbing whatever body part to to try to prevent her from rising up.
- LS: Can you describe with any particularity, you know, who was doing what, who was touching what part of Ms. Moore's body?
- TG: I think Gwen was up near her head and that the rest I don't remember; I think, you know, I don't want to I mean speculate –
- LS: Mm-hmm.
- TG: I think there was one handcuff on one wrist but that's about as much as I remember.
- LS: So when you first entered you described one handcuff on one wrist –
- TG: I think so, yeah.
- LS: Ms. Moore was not in a state of being completed handcuffed.
- TG: Oh no, it was clear they weren't going to be able to handcuff her given the number of officers that were there.
- LS: When you first entered the apartment did you have any personal knowledge as to what had happened previously or why the officers were engaged with Ms. Moore in that way?

- TG: Personal knowledge, no. I remember hearing officers going to that scene for whatever reason, I I, you know, just because I'm listening to the radio –
- LS: Mm-hmm.
- TG: and I'm aware of what other officers are up to.
- LS: But no specific knowledge as to why they were trying to arrest or put -
- TG: No.
- LS: handcuffs on Ms. Moore?
- TG: No.
- LS: And what did you do next and why?
- TG: I think I took Ms. Moore's other hand and closed it, you know, to the distance where we would be able to handcuff her, and I think someone had to help me because of the resistance.
- LS: Did you have to apply any kind of force to Ms. Moore's hand or wrist in order to try to do that?
- TG: Just the you know the force to pull her hand behind her back.
- LS: Okay. And why did you then why did you go in and provide that assistance?
- TG: Because they were obviously trying to handcuff her and she was resisting.
- LS: Are you familiar with something called General Order U2, your department's Use of Force policy?
- TG: Yes.
- LS: And do you have any training or experience in utilizing proper police techniques for non-lethal force, for example: handcuffing or physically restraining combative people?
- TG: Yes.
- LS: Can you just describe that training briefly?
- TG: Well, we have regular departmental training for compli pain compliances holds control holds, to assist with the gradation I guess of resistance whether if someone is just passively resisting you would just, you know, I'm familiar with how to handcuff them in that sense; –
- LS: Okay.
- TG: pain compliance holds if there's more active resistance.

Case #2327 Officer Gardner

Transcribed by MGM 10-29-13 Reviewed by BN 10.30.13

- LS: And are you familiar with a Training Information Bulletin 247 called The Wrap Restraint?
- TG: Yes.
- LS: And do you have any training and experience as it relates to using the Wrap restraint?
- TG: Yeah, at some point when we first implemented the device, we were trained in it and been involved in applying it several times.
- LS: How many times would you estimate that you personally applied it?
- TG: Well, you know, personally, it's usually, you know, a team effort –
- LS: Mm-hmm.
- TG: so I've been involved probably half a dozen times.
- LS: Prior to the date we're talking about?
- TG: Yes.
- LS: And are you familiar with Training Information Bulletin 234 called *Sudden In-Custody Deaths*?
- TG: I mean it's been a while since I saw that but yeah.
- LS: And do you have any training on the topic of Positional Asphyxia?
- TG: Yes.
- LS: Can you just describe that for me?
- TG: And your question was *Do I have any training on that*?
- LS: Yeah, on the topic of Positional Asphyxia.
- TG: Yes, I think, you know, at some point in my career we've been instructed how to help avoid that problem. And you want to know what the training was just, you know, generally that you if someone is overly large or something like that, you want to avoid having them face down –
- LS: Okay.
- TG: after handcuffing.
- LS: Is the time, the length of time, that they're face down the criteria for you to consider?
- TG: Yeah, you would know not want it prolonged.

- LS: And what about are there any other factors about, you know, applying force to the body or pressure to the back, anything of that nature?
- TG: I don't have a specific memory, but, you know, common sense would say Yes, you don't want to you know kneel or stand on someone for any prolonged time after of course they're secured in handcuffs –
- LS: Okay.
- TG: because before that point it's still an active fight.
- LS: Would you mind if I take about a 2-minute break I left –
- TG: Sure.
- LS: something that I need for -
- TG: Yeah, no problem.
- LS: the interview. I apologize, I know it sort of disrupts the flow of things.
- TG: That's okay.
- LS: The time is 1:21 and I'm going to turn the recorder off so that I can grab something from the file.

RECORDING BREAK

- LS: Okay, we're back on the record. It's October 4, 2013. It's 1:23 p.m. We're resuming the interview. Officer Gardner is present and his Counsel, Mr. Stern are present and let's continue. Officer Gardner, can you describe any personal force that you applied to Ms. Moore's person?
- TG: I helped secure in handcuffs –
- LS: Okay.
- TG: by, you know, in the struggle; getting her I think her left hand behind her back and then I may have been the one who closed the clasp or the hasp around her wrist, and then I also helped hold her feet down to apply the ankle restraint for the wrap.
- LS: And other than those things that you mentioned did you engage in any other touching of Ms. Moore's body or any other application of force?
- TG: Well, yes, when she stopped breathing I helped unhandcuff her.
- LS: And other than that?

- TG: I may have helped roll her over, you know, to onto her back.
- LS: Let's go back to your assisting in the handcuffing do you recall how many officers it took to actually successfully get Ms. Moore handcuffed?
- TG: My memory is that it took everybody's combined effort. So everybody was there.
- LS: So we've indentified yourself, Officer Brown, Officer Tu, Officer Smith, and then two other officers, Mathis and Kastmiler?
- TG: Yes.
- LS: And would you describe Ms. Moore's behavior while you were trying to get her into handcuffs?
- TG: Combative.
- LS: Can you describe it in a way that someone who wasn't there could see it in their through your words?
- TG: Just trying to rise up like I said earlier and not allowing her hands to be successfully pulled behind her back to facilitate the handcuffing.
- LS: And eventually she was able to be handcuffed?
- TG: Yes.
- LS: And after that happened was there any change in her demeanor or her level of resistance?
- TG: I think at some point she calmed down.
- LS: Did someone make reference or mention of a wrap?
- TG: Yes, I really actually I don't remember who I think it was a sergeant asked for a wrap
- LS: Did you ask for it?
- TG: I don't believe I did, no.
- LS: And does it appear at the scene?
- TG: Yes.
- LS: Do you know where it came from or how it -
- TG: I mean I don't have a specific memory, so I don't know if I should speculate.
- LS: When was the first time you saw it?

- TG: Just after the sergeant asked for it on the on the radio.
- LS: And at some point does someone make a decision to utilize the Wrap?
- TG: Yes, it was made that decision was made when the sergeant I can't remember her name asked for it on the radio.
- LS: And, let me show you what we've marked as PRC1 through 5. These are just some photographs. Do these photographs depict a wrap that is similar in appearance to the one that you used on February 12th?
- TG: Yes.
- LS: And ultimately was any portion of the Wrap applied to Ms. Moore?
- TG: Yes, the ankle restraint.
- LS: And can you identify in PRC 3, do you see anything that resembles the ankle strap that you used?
- TG: Yes, in the bottom portion the yellow strap around this mannequin or something, ankles.
- LS: And on PRC3 it looks like you're pointing to the yellow strap at the bottom above the feet?
- TG: Yes.
- LS: And who applied it?
- TG: I think Mathis wait a min- why is this sergeant's name escaping me?
- Rep: Amber Phillips?
- TG: Amber Phillips.
- Rep: Okay.
- TG: I think she handed it to Mathis and I secured Ms. Moore's feet and he wrapped it around her ankles.
- LS: When you say you secured Ms. Moore's feet, what do you mean by that?
- TG: Held them down.
- LS: What's she doing while you're holding them?
- TG: Struggling.
- LS: And eventually was the ankle restraint put on Ms. Moore?

- TG: Yes.
- LS: And were you able to apply it right away or, you know, what was the level of ease in which you were able to get it onto Ms. Moore?
- TG: I wouldn't say it was easy by any means, because there was a struggle.
- LS: How long would you say it took to get it on?
- TG: I don't know.
- LS: What about the remainder of the Wrap device, what was done with that if anything?
- TG: The remainder?
- LS: The other portions of the Wrap; so, the parts that go around the upper portion of the leg like I'm pointing to PRC5.
- TG: Yeah.
- LS: Was this portion of the Wrap put on as well?
- TG: No.
- LS: Why not?
- TG: I think the determination was that Ms. Moore was too large for the Wrap and that we were going to get a gurney.
- LS: Can you describe, with regard to yourself as an assisting officer, what was your rationale for placing assisting in the placement of the ankle restraint on Ms. Moore?
- TG: It's part of the restraining of a combative person to affect the entire process of putting the wrap on. It also I mean helps neutralize their feet, which when they're kicking are obviously quite dangerous.
- LS: After the ankle restraint was put on Ms. Moore did you make any observations about its tightness?
- TG: I mean it seemed appropriate, appropriate yeah.
- LS: Was there anything about the way it was applied that seemed out of sorts or unusual or inappropriate based on your observations and your training?
- TG: No.
- LS: Now after the ankle restraint was put on Ms. Moore, what's her demeanor like?
- TG: I think gradually calming down.

- LS: How was Ms. Moore positioned at the time that the ankle restraint was put on?
- TG: I I I think on her back.
- LS: In your best approximation how much time passed from when you first arrived into the apartment and when Ms. Moore was successfully placed in handcuffs?
- TG: Maybe 30 seconds.
- LS: And in your best approximation how much time passed from when you first arrived in the room and the ankle restraint was put on?
- TG: Maybe 2 minutes.
- LS: Did you hear any commands being given to Ms. Moore during the entire time you were in the apartment?
- TG: Well, a lot of commands to to just relax and just stop resisting so we could facilitate the handcuffing initially.
- LS: And did you hear Ms. Moore making any sounds, utterances, anything?
- TG: Yeah, just like loud yelling that accompanied her kind of trying to rise up and and not allow us to handcuff her.
- LS: Would you describe the yelling as a constant or an intermittent thing?
- TG: It was kind of just, I would say constant, you know, just as part of the struggle.
- LS: So after Ms. Moore is put in handcuffs and after the ankle restraints were put on you think you described, she started to settle a little bit?
- TG: Yeah.
- LS: And was she repositioned somehow once those two things were put on?
- TG: Yeah, at some point she was on her side.
- LS: Is there any reason that she was not put into an upright seated position?
- TG: Well, the whole thing you have to imagine someone this large, it's not going to be easy to move this person around. And I think it was her bed, so it wasn't really conducive I think to be able or you know practical to pull her up into a seated position, although that would happen for a normal, normally-sized person for the wrap, because they have to be sat, sat up at some point. But no, I don't believe we attempted to put her in a sitting position.
- LS: Did you take part in repositioning Moore onto her side?
- TG: I don't think I did, because I was down at her feet.

- LS: While you're waiting, are you at this point waiting for Berkeley Fire?
- TG: Yeah.
- LS: And during this time you've described Ms. Moore as being on her side, is that accurate?
- TG: Yeah, it was like partially I mean it wasn't –
- LS: Okay.
- TG: like I mean she's huge I mean it was you know.
- LS: And then do you have any recollection of how Ms. Moore's ankles appeared in your assessment of whether she was on her side versus on her back or stomach?
- TG: What do you mean?
- LS: Like do you have any memory of looking at Ms. Moore's ankles and being able to tell whether she was on her side versus seeing the tops of her feet or the backs of her feet?
- TG: I don't no, I don't really remember that.
- LS: Okay. Would it refresh your memory to look at your statement?
- TG: Sure.
- LS: On Page 16, starts at Line 681.
- TG: Okay.
- LS: Does that refresh your memory at all about the –
- TG: Yes.
- LS: positioning?
- TG: Yeah, yes.
- LS: How so?
- TG: It looks like the ankles were positioned as such as someone being on their side.
- LS: Okay. While Ms. Moore is positioned on her side or partially on her side and you're waiting for Berkeley Fire, are you or any other officers physically touching Ms. Moore?
- TG: I can't speak to anybody else specifically, but I I have my my hands on her ankles.
- LS: Okay. And why did you have them on her ankles?
- TG: Just to anticipate any further struggle, to keep in contact, it's kind of in a sense monitoring her I guess level of aggression.

Case #2327 Officer Gardner

Transcribed by MGM 10-29-13 Reviewed by BN 10.30.13

- LS: And how would you describe the touching that you were engaging in, you know, forceful, light –
- TG: No, it was more I mean as she relaxed, I was obviously able to lighten my hold or loosen my hold until it was almost kind of a light touch, where I'd be able to monitor whether or not she'd start kicking again.
- LS: And at some point as you're there at that moment, at some point does anything unusual did you notice anything unusual about Ms. Moore's breathing?
- TG: During this whole time?
- LS: Yes.
- TG: Yeah, at some point someone said, "I don't think she's breathing."
- LS: Is that something you observed or did someone else call your attention to?
- TG: I think someone else called my not my specific attention, but said it.
- LS: Do you remember who that was?
- TG: No.
- LS: Did you then make any observations of your own?
- TG: It did look like she'd stopped breathing.
- LS: What did you do at that point?
- TG: Well, I helped roll her completely onto her oh actually we had to take I do remember Gwen was monitoring her or taking a carotid pulse.
- LS: Okay.
- TG: And I and when she realized she's not breathing, she has no pulse, everybody kind of just there was a flurry of activity. I ran over or not ran over I just moved up towards her handcuffs and unhandcuffed her and then we rolled her onto her back, took her ankle restraints off as, as to begin CPR.
- LS: Did you take part on removing the ankle restraints?
- TG: I don't remember.
- LS: Okay. Do you recall seeing them remove them?
- TG: Yes.
- LS: At what point in the interaction do you remember not hearing any noise or yelling from Ms. Moore, the first time you didn't hear any noise or yelling?

TG: That's kind of vague, I mean the question, so -

Rep: Objection vague.

TG: I don't-

LS: All right, was there any time when you observed that Ms. Moore was constantly making noise and then stopped?

TG: Well, as I said earlier at some point she did start to calm down and everybody started to relax a little bit.

LS: Okay.

TG: And, you know, like I said, my touch on her ankles was lighter and then at some point someone announced that they didn't think she was breathing.

LS: At any time in your presence did Ms. Moore make any statements that she was in pain?

TG: No.

LS: At any time in your presence did Ms. Moore describe having difficulty breathing?

TG: No.

LS: At any time in your presence did Ms. Moore describe any kind of medical distress?

TG: No.

LS: How much time would you say you were in Ms. Moore's presence when she was on her side or partially on her side before someone said she wasn't breathing?

TG: You mean from the time that she was in the wrap or in the ankle restraint?

LS: Yes, after the -

TG: From that point forward?

LS: Yes.

TG: A minute maybe or two.

LS: During the time earlier when you described that Ms. Moore was positioned, I think you said the word *face down*, are we talking about on the stomach?

TG: What - can you repeat what your question is?

LS: You had earlier described Ms. Moore's positioning as face down when you arrived in the apartment?

- TG: I don't think she was face down. I think she was partially on her side –
- LS: Okay.
- TG: because I think -now that I'm thinking back on it, I think it was I think it might have been Tu was wedged in between the wall and her.
- LS: Okay.
- TG: Yeah. And then so I was I had to reach underneath her left side to pull her arm behind her back.
- LS: At any time did you see Ms. Moore's nose or mouth making contact with the mattress?
- TG: No, I mean I don't remember, like.
- LS: When you heard an officer say that Ms. Moore might not be breathing, did that happen one time or more than one time?
- TG: I don't remember.
- LS: After you were alerted that Ms. Moore might not be breathing what happened?
- TG: Didn't I answer that?
- LS: Did was CPR done?
- TG: I thought I answered that.
- LS: If you did, I've not recollected it, so.
- TG: I think what we what I said was that I rushed to get her handcuffs off -
- LS: Okay.
- TG: and we put her on her back and Officer Tu began CPR.
- LS: Okay. And what did you do after the CPR was started?
- TG: I don't remember. I think oh I know what I did. We were calling for BFD to come Code 3 because she had stopped breathing. So that flurry of activity to start CPR and get BFD there to assist with life saving, and I went outside to try to make sure that BFD knew exactly where to go, so I went outside the apartment and met BFD at the elevator.
- LS: Did you have an opportunity to see whether any other officers were in physical contact with Ms. Moore during the application of CPR other than Officer Tu?
- TG: No, I don't remember.

LS: At the conclusion of this incident did you have occasion to speak to any other officers at the apartment?

TG: No, we were just all basically rushed out of there.

LS: Did you at any time while you were still on scene at Allston, prior to going back to the department, did you hear any other officers make any statements about why they had been trying to take Ms. Moore to custody?

TG: No.

LS: If I can just review my notes for a second. I think we're done. Okay, I have no other questions – anything to clarify or add?

Rep: None for me, thank you.

TG: No.

LS: Okay, the time is now 1:42 and that concludes our interview. Officer Gardner thanks for your time.

TG: Thanks.

Rep: Thank you.

STATEMENT OF OFFICER KASTMILER PRC COMPLAINT #2327

LS: Lucinda Simpson, PRC Officer NK: Officer Kastmiler, Subject Officer

HS: Harry Stern, Legal Rep.

LS: Good evening, this is PRC Officer Lucinda Simpson. Today's date is September 24, 2013. The time is 6:22 p.m. I'm here with Officer Kastmiler, Badge #104, is that correct?

NK: Yes.

LS: And also present with Officer Kastmiler is his Counsel Mr. Harry Stern. Officer Kastmiler is a subject officer on complaint #2327. Officer Kastmiler, you are here under the provisions and protections of the Lybarger Admonition having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation. Any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Officer Kastmiler and Mr. Stern, are you aware that this interview is being recorded?

Rep: Yes.

NK: I am.

LS: And Officer Kastmiler, will you answer the questions today truthfully and to the best of your ability?

NK: Yes.

LS: I'll start off with you are currently employed as a police officer with the Berkeley Police Department, is that correct?

NK: Correct.

LS: And how long have you been so employed?

NK: A little over five years.

LS: And do you have any prior police experience before that?

NK: No.

LS: And can you briefly describe any positions and assignments that you held during these five years?

Case #2327 Officer Kastmiler

Transcribed by Maritza 10-31-13 Reviewed by LS Date 10-31-13 NK: I've worked patrol for the whole time that I've been police officer. I am a certified drug recognition expert in the State of California.

LS: Okay. And did you have occasion to be on patrol on February 12th of this year just before midnight?

NK: Yes.

LS: And are you familiar with something called The Crisis Intervention Team?

NK: Yes.

LS: And what is that?

NK: It's basically a new program within the Police Department which provides additional training with dealing with people who are in a crisis or people that are having mental issues. It's a special assignment with limited number of officers who are accepted into the program and they do receive additional training.

LS: Are you familiar with general order C66, Crisis Intervention Team?

NK: Yes.

LS: Looks like the date of issue on this Crisis Intervention Team C66 is January 24th of 2013, is that correct?

NK: Yes, that's what it says.

LS: Were you aware of C66 prior to being on patrol on February 12th of this year?

NK: I believe so. I believe it was mentioned.

LS: Do you recall how it was mentioned like in a training or a briefing?

NK: It was more an informal orientation for it being a new program being explained to the department I believe it was talked about in briefing.

LS: Okay. And can you describe how much time was devoted to that briefing?

NK: I don't recall, I just remember it was part of a briefing before a shift.

LS: Do you remember how much time that occurred before February 12th?

NK: I don't, unfortunately.

LS: Okay. And what was your understanding of Crisis Intervention Team as of the date of February 12th? What was your understanding of how it worked?

NK: My understanding of how it worked was that basically officers would receive additional training who were part of the Crisis Intervention Team, which was within association

with the Mental Health Department. It was a joint effort between officers who have additional training and also Mental Health to basically provide additional resources and assistance to people that were having a very serious crisis or were actually violent.

LS: Okay. And are you also familiar with something called Mobil Crisis?

NK: Correct, yes.

LS: Is that a separate issue from CIT?

NK: It's part of the Berkeley Mental Health but the idea I think between Crisis Intervention Team and also Berkeley Mental Health was kind of a joint effort between Mobil Crisis and also the Crisis Intervention Team trained officers –

LS: Okay.

NK: - to kind of bring it together.

LS: Do they have separate general orders or training and information bulletins?

NK: I don't know. I don't know if they have their own separate general orders. I – I'm not aware of any crisis or I'm sorry, any mobil crisis general orders –

LS: Okay.

NK: - that they have.

LS: As of February 12th of this year were you yourself a member of Crisis Intervention Team?

NK: No.

LS: And on that date what team were you working?

NK: I believe it was before the new schedule changed, so I believe I was on team 4.

LS: Okay. As of February 12, 2013, I'm going to repeat myself a lot with that date, were you aware of any other officers that you were working with on your shift that were CIT trained?

NK: No.

LS: No you were not aware or they were not trained?

NK: I am not aware of anybody that was CIT trained.

LS: Okay. And were you aware of whether the Crisis Intervention Team procedure as it's outlined in C66 was let's say operational as of February 12, 2013?

NK: I don't believe it was. I believe they had made selections, but I believe they were waiting for the okay for training before this was actually implemented.

- LS: And training for whom specifically?
- NK: For the people that were basically accepted to be CIT trained officers.
- LS: Okay.
- NK: They needed to have special training, which separates them from a regular patrol officer.
- LS: And on February 12, 2013 around midnight, did you have occasion to respond to a call for assistance at a location of 2116 Allston Way?
- NK: Yes.
- LS: Could you describe what you were made aware of?
- NK: I was made aware over the radio that another officer was requesting emergency cover at that address.
- LS: And did you have occasion to arrive at that location?
- NK: Yes, I responded there to assist with the emergency.
- LS: And what was the level of response?
- NK: What we call code 3, which is emergency lights and sirens.
- LS: And what information did you have specifically about why you were going there?
- NK: That another officer is requesting emergency cover.
- LS: Was that the extent of the information you were made aware of?
- NK: Yeah, that's all that was broadcast over the radio.
- LS: Okay. And so did you arrive at 2116 Allston?
- NK: Yes.
- LS: Did you see any other officers when you got there?
- NK: Yes, I believe I arrived at the same time as Officer Mathis and Gardner. I believe we rode the elevator up together.
- LS: Did you have occasion to enter a particular apartment?
- NK: Yes, we did. I don't recall what apartment number it is without looking.
- LS: That's okay. And when you went into the apartment, can you describe what you saw?

NK: When I arrived I believe there was a large male laying stomach down on a mattress kind of in a corner of the room. There were several officers that were struggling to control this person who was flailing around and basically resisting and trying to get back up.

LS: Okay. Which officers, initially when you came in, are you speaking of?

NK: I believe it was Officers Brown, Tu, and Smith.

LS: Okay. And the person that you describe on the stomach, did it later come to your understanding that that person was named Xavier Moore?

NK: Yes, later.

LS: Okay. And for purposes of our discussion here today, is it okay if I refer to Xavier Moore as Ms. Moore?

NK: Sure.

LS: Okay. What was Ms. Moore doing physically when you saw her?

NK: Ms. Moore was laying on her stomach basically trying to bring her arms back up and also kicking her legs tryi- it appeared that Ms. Moore was trying to get back up.

LS: Okay. What actions was she undertaking that made you conclude that?

NK: Basically if you're kicking your legs around trying to kick the police officers off you and also trying to raise your hands up, it's basically active resisting in my eyes.

LS: Okay. When you entered the apartment and made this initial observation, did you have any personal knowledge as to why the officers were engaged with Ms. Moore in that manner?

NK: No.

LS: And are you familiar with general order U2, BPD's use of force policy?

NK: Use of force, yes.

LS: Okay. If you ever need to look at it you can =

NK: Yeah.

LS: - take a minute or talk to your attorney. Can you just describe briefly any training or experience that you have in using proper police techniques for using non-legal force, example: handcuffing, restraining a combative person?

NK: I've received extensive training while in police academy and then also I believe every six months we receive further reinforced training for use of force and also handcuffing policies and procedures.

LS: Okay. Are you familiar with BPD's training and information bulletin 234 called Sudden In-Custody Deaths?

NK: Yes.

LS: Do you have any training on the topic of positional asphyxia?

NK: Yes.

LS: Can you describe it?

NK: The –

LS: The training, I'm sorry.

NK: The training I believe we had an introduction on that mentioned in the academy, and I believe we've also mentioned it through training. I don't remember specifically if it was incorporated into use of force or where, but we have received training on positional asphyxiation.

LS: And what's your understanding of what positional asphyxia is?

NK: Positional asphyxia, to my understanding, is being placed in a position where you're basically unable to breath whether or not it's face down or side down, depending on any kind of trauma that you might have, it makes it impossible to breath and therefore you will suffocate.

LS: Have you received any training on any particular police conduct to avoid – so that you can avoid a person suffering from positional asphyxia?

NK: Yes, I was trained that you don't have a person in a face down position for extended periods of time.

LS: Are you familiar with any other – apart from what you've just mentioned, are you familiar with any other premises that you were to avoid to avoid positional asphyxia?

NK: Also I mean it's important – it's basically the same thing – but also to make sure that somebody's head is not pushed against an object that would impair their breathing.

LS: Okay. Are you familiar with training and information bulletin 247 called The Wrap Restraint?

NK: Yes.

LS: Do you have any personal training and experience in utilizing the wrap?

NK: Yes.

LS: Can you describe it?

NK: We've had orientation when I had first started working at the Police Department, there was orientation of the wrap and also it's use – I believe it's also incorporated every six months or so into our use of force refresher.

LS: And prior to February 12 of this year, did you ever have occasion to personally apply the wrap device?

NK: Yes.

LS: How many times would you estimate?

NK: I would probably say about 15 - 20.

LS: And have you also had occasion to assist other officers in applying the wrap?

NK: Yes.

LS: And how many times would you estimate you've been an assisting officer in that regard?

NK: Maybe another 15 times or so.

LS: Are you familiar with the safety precautions that are advised to be used in connection with the wrap?

NK: Yes.

LS: And, as you sit here now, can you tell me what they are?

NK: The wrap, it's is important not to have somebody in a face down position, because they – they're movement is completely restrained, it's important to make sure that they are upright once the wrap is complete deployed onto them.

LS: And in not being on a face down position, is that after it's applied or during-

NK: Correct.

LS: Okay.

NK: Yeah, after it's applied.

LS: And what about, are there any procedures for checking tightness or things of that nature?

NK: I believe so. I believe if they complain about pain or tightness, we're supposed to reevaluate and make sure that it's not cutting off any circulation or is applied too tight.

LS: Okay. If I can show what we've marked here is PRC 1, 2, 3, 4 and 5, and these are some photographs, you want to look through them, can you tell me if you recognize if this looks like the wrap that your department uses?

NK: Yes it does.

- LS: So after you enter the apartment and you make your observation, can you describe what you did?
- NK: I assisted by controlling Mrs. Moore's hands, actually her wrists, and also her left leg.
- LS: And when you described that Ms. Moore was trying to bring her hands up, what do you mean by that?
- NK: She was trying to bring her hands up either to knock myself or other officers away or to try and stand up, in my opinion.
- LS: And was Ms. Moore handcuffed at that time?
- NK: I believe so.
- LS: And was she still on her stomach position when she was trying to do that?
- NK: I believe so, yes.
- LS: And can you describe what you did with regards with Ms. Moore's hands or wrists?
- NK: I remember just attempting to control her wrist and stop her from bringing her hands up and basically continuing to fight against us.
- LS: Okay. And did you actually make contact with her hands or wrists?
- NK: I believe so, yes.
- LS: How did you do that if she was on her stomach? How were you able to reach her hands?
- NK: Her hands were behind her back.
- LS: Okay. And what did you do? How did you make contact with them?
- NK: Basically grabbed her wrists and held them there.
- LS: Okay. In doing so did you exhibit or did you exert any kind of force on Ms. Moore's back?
- NK: No.
- LS: At any time did Ms. Moore make any effort to have contact with you?
- NK: I believe she tried to grab my hand while I was applying or while my hand was on her wrist when she tried to reach back with her fingers and grab me.
- LS: Was she able to do that or –
- NK: I believe so, yeah.

LS: What did you do?

NK: I continued holding her wrist -didn't do anything.

LS: And what is – can you describe Ms. Moore's physical actions during this time while this is going on?

NK: Kicking her legs and then also trying to bring her arms back and upward.

LS: At any point did you have to use anything other than your hands to try to restrain Ms. Moore?

NK: Yes, I believe I used my shin and my knee on the back of her left leg to try and keep her leg from continuing to kick.

LS: And what part of her leg did you apply that to?

NK: I believe it was the upper portion kind of near the hamstring area.

LS: At any time did you use your leg or your shin above Ms. Moore's waist?

NK: No.

LS: Did you personally have occasion to apply any force to any other area of Ms. Moore's body other than the leg or the hands?

NK: No.

LS: Applied to her back or her head area?

NK: No.

LS: Can you describe what Officer Tu and Smith and Brown were – how they were positioned as you were attending to the hands and the upper leg?

NK: I believe Officer Brown was towards the upper portion of Ms. Moore. I believe Officer Smith was there, too; so they were both on my left, and I believe Officer Tu was on the right side of me towards Ms. Moore's legs.

LS: And what was Officer Brown doing?

NK: I - I don't recall really I mean I was doing my own thing with trying to control her hands and her legs, so I don't recall what she was doing at that time.

LS: Okay. What about Officer Tu, what was Officer Tu doing during that time?

NK: I believe he was trying to do the same thing that I was, which was controlling her legs and stopping her from kicking.

LS: Did you see how Officer Tu was positioned with regard to Ms. Moore's body during this time?

Case #2327 Officer Kastmiler -

Transcribed by Maritza 10-31-13 Reviewed by LS Date 10-31-13

NK: I - I don't recall.

LS: And you say Officer Smith was towards her upper end as well with Officer Brown?

NK: I believe so, yes.

LS: Can you describe what you saw him doing?

NK: I don't recall what he was doing at that time.

LS: And what did you see Officer Gardner do?

NK: I remember he was there, but I don't remember what he was doing.

LS: And what about Officer Mathis?

NK: The same thing, I don't recall what he was doing; I know that he was there.

LS: Do you recall where either one of them was positioned like top of the body, bottom of the body?

NK: I believe they were both towards the bottom half of Ms. Moore's body.

LS: Would it refresh your recollection to look at your interview that you gave on February 13th of this year with regard to what Officer Mathis was doing?

NK: Yes.

LS: If I can show you page 8 – let's see here – looks like starting at line 343 – if you want to – let me know if that refreshes your memory at all.

NK: Okay. Okay.

LS: Does that refresh your memory?

NK: Yes.

LS: Can you describe what Officer Mathis was doing?

NK: Yes, Officer Mathis and Officer Gardner were positioned towards the lower half of Ms. Moore trying to control her legs.

LS: During this time did you hear any sounds or statements from Ms. Moore?

NK: I don't recall hearing any statements.

LS: At some point did Sergeant Cardoza and Sergeant Phillips arrive?

NK: Yes.

- LS: When did they arrive?
- NK: I believe that was after Moore was positioned on her side and we were attempting to start the early stages as of deploying the wrap.
- LS: So at some point does a wrap device appear on scene?
- NK: Yes, I don't remember who brought up there but somebody did retrieve a wrap.
- LS: Okay. Do you remember who asked for it if anyone?
- NK: I I don't recall who asked for it.
- LS: Was a portion of the wrap eventually placed on Ms. Moore's body?
- NK: Yes, the nylon, single strap leg wraps.
- LS: And who put that on Ms. Moore?
- NK: I don't recall who actually put that on her legs.
- LS: And did you have any part or assistance in applying the ankle wrap on Ms. Moore?
- NK: I don't believe so.
- LS: Were you able to see, in addition, to anyone who might have put the wrap put the ankle restraint on, anyone who might have assisted in doing so?
- NK: I don't remember who applied the actual wrap.
- LS: Can you describe how much time passed from when you first arrived into the room and when the ankle strap was put on?
- NK: I would probably estimate a couple of minutes, maybe 2-3 minutes. Actually it's probably even less than that, maybe 1-2 minutes.
- LS: And was there any change in Ms. Moore's physical activity when the ankle strap was put on?
- NK: Yes, I believe she stopped resisting after the only the ankle strap was applied.
- LS: Is the ankle strap put on before the remainder of the wrap or is it put on after?
- NK: No, that's the first procedure is to put on the ankle wrap.
- LS: Okay, so if you're looking at PRC #3 here, it's this big yellow strap at the bottom, is that the strap we're speaking about?
- NK: Yes.

- LS: Okay, and here it's on the outside, is that not appropriate?
- NK: I don't believe that's that's not how I was trained.
- LS: Okay, how were you trained?
- NK: To apply that first.
- LS: Okay, and first, is that meaning on to the legs and then this additional device goes over it this wrap?
- NK: Yes.
- LS: And the additional device that I'm speaking of is this black portion that goes over the legs sort of got three additional straps on it?
- NK: Yes.
- LS: Okay. Do you know if the remainder of the wrap was put on Ms. Moore?
- NK: It was not.
- LS: Was there a particular reason for that?
- NK: At one point Moore stopped resisting and there was no need to continue with the rest of the wrap.
- LS: And I want to just explore a little bit, what was Moore's position when this ankle restraint was put onto her?
- NK: I believe Moore was still in a stomach down position when the leg restraints were applied.
- LS: Okay, if you can if I can direct your attention to page 10 of your interview from February 13th, and you can start with line 410 and go through line 422 there's some discussion there about the point where the wrap is put on and the positioning of Moore and I wanted to get some clarification from you on your best recollection of how Moore was positioned during that process.
- NK: Yeah. There you go.
- LS: So it looks like on line 420 you say, "But I believe at that point he was already on his side," does that mean when the wraps being put on or at a different time, I'm trying to get some clarification.
- NK: I believe Ms. Moore was actually laying on her side when we deployed the leg restraints.
- LS: And then above that you mentioned, "Stopped physically resisting," and I wanted to get clarification if the resisting occurred when Moore was on the side or if it was the application of the ankle restraint that was done on the side?

- NK: I don't know which caused the actual stop and her choice to resist.
- LS: Were you one of the people who moved Moore onto her side?
- NK: Yes, I believe so.
- LS: And as you sit here today, can you recall when that was in relation to when the ankle strap was put on?
- NK: I believe we rolled Moore onto her side and applied the ankle straps at that point.
- LS: Once the ankle strap was put on, was there any change in Moore's demeanor or physical activity?
- NK: I believe she stopped resisting at that point.
- LS: And how soon after it was applied did that happen?
- NK: Maybe estimating probably 10 30 seconds afterwards it's an estimation though.
- LS: Okay. At some point after Ms. Moore was on her side, did any of the officers observe anything unusual about her physical condition?
- NK: I believe at one point somebody mentioned that Ms. Moore was no longer breathing and did not have pulse.
- LS: And did you make any observations of your own at that time?
- NK: I believe I checked to see if Moore was actually breathing I was checking to see if there was respiration. I believe that another officer was checking her pulse.
- LS: And how soon after Moore was on her side and in the ankle restraint that it was noticed that she wasn't breathing?
- NK: I'd probably estimate 5 10 seconds, maybe.
- LS: After Ms. Moore was placed on her side and the ankle restraint was put on her, were any officers applying pressure to her head or back?
- NK: No.
- LS: And once it was realized that Ms. Moore wasn't breathing or might not have had a pulse, what if anything happened? What was done?
- NK: We immediately took off any restraints that Moore had.
- LS: And specifically?
- NK: Handcuffs and the leg wrap.

LS: And who took off the handcuffs?

NK: I don't – don't recall who was actually taking them off.

LS: And what about the ankle restraints, who took that off?

NK: Again, I don't recall who was taking that off.

LS: Did you personally do either one of those, remove either one?

NK: Not that I remember.

LS: Did you have occasion to become aware of Moore not breathing one time or more than one time?

NK: Only at the point where somebody mentioned that Moore had stopped breathing, that was the first time I noticed.

LS: Okay. And after that time when you noticed that someone made that statement, was there an occasion where someone said, *Oh no, she is breathing again*?

NK: Not that I recall.

LS: Okay. And was Moore repositioned after the handcuffs and the ankle restraint was taken off?

NK: Yes.

LS: How so?

NK: Moore was laid flat on her back.

LS: Did you participate in moving Moore onto her back?

NK: Yes.

LS: How many officers did it take?

NK: I believe everybody was assisting and – and moving Moore from her side to her back.

LS: During the time that you spent in Ms. Moore's presence, at any time did she make any statements that she was in pain?

NK: Not that I recall.

LS: Did she make any statements about having any difficulty breathing?

NK: No, not that I recall.

- LS: During the time that you were attending to Ms. Moore when she was positioned on her stomach, did you personally ever try to monitor her vital signs?
- NK: No.
- LS: And why not?
- NK: I was too busy controlling her hands and her legs, because she was resisting at that point.
- LS: And did you see any other officer trying to monitor her breathing or vital signs while she was positioned on her stomach?
- NK: No.
- LS: During the time that Ms. Moore was positioned on her stomach what if anything was she on? What was she located on top of?
- NK: I believe it was some kind of small mattress.
- LS: And can you just describe sort of the what the density of it was?
- NK: Relatively thin. It wasn't a box spring or anything like that separating it; it was just a single mattress that seemed fairly thin, maybe 3 4 inches.
- LS: And during the time that Ms. Moore was positioned on her stomach, can you describe during that whole time how you saw her face positioned?
- NK: It was positioned in the corner of the room near in between a wall and the mattress, I believe.
- LS: And specifically the front of her face with regard to the mattress as she is in a stomach down position, is her mouth or her nose having contact with the mattress?
- NK: I don't believe so.
- LS: What causes you to not believe that it was in contact?
- NK: Based on my recollection, I don't remember seeing a face pressed against the mattress or the wall.
- LS: Okay. When the ankle restraint was put on, was there any reason that Moore was rolled onto her side instead of a seated position?
- NK: I believe we were basically trying to figure out how to deploy the wrap and if we needed a secondary wrap or if there was any special way to deploy the wrap because Ms. Moore was a larger individual than we usually use for the wrap.
- LS: Once the ankle restraint is put on and Moore appears to calm, is there any reason why she wasn't then put into a seated position but allowed to remain on her side?

- NK: She was from that position on her side the next position that she was moved to was flat on her back. She was never put in a seated position, if that's what you're asking.
- LS: Yes, is there any reason that she was allowed to remain on her side and that she was not put into a seated position?
- NK: I don't recall other than she was a very large individual and it was very difficult to move her around, I remember that.
- LS: At some point after Ms. Moore is not breathing and does not have a pulse, do officers start CPR?
- NK: Yes.
- LS: And did you have occasion to continue to apply physical touching to Ms. Moore while the CPR was being administered?
- NK: Yes, I believe I held Ms. Moore's hands just in case she started actively resisting again, because she was unhandcuffed at that point.
- LS: And what was your concern if any of that what might happen if you didn't control the hands?
- NK: That she might attempt to punch one of us in the face, uh get back up or, continue fighting.
- LS: Okay. Were any other officers touching Ms. Moore while CPR was being administered other than what you were doing?
- NK: Ken Tu was doing chest compressions during the CPR.
- LS: Any other officers restraining other areas of Ms. Moore's body?
- NK: Not that I recall.
- LS: After at some point is Ms. Moore attended to by Berkeley Fire and removed?
- NK: Yes.
- LS: And at the scene did you have occasion to have any conversations with Officer Brown about, you know, why the officers were trying to take Ms. Moore into custody?
- NK: No.
- LS: Did you hear any other officers state why they had been trying to take Ms. Moore into custody?
- NK: Later when basically the reports were being compiled that there was some kind of warrant for her arrest.

LS: Did you have occasion to speak to a witness by the last name of Sterling?

NK: Yes.

LS: And did you have occasion to handwrite his statement?

NK: Yes.

LS: And why did you handwrite his statement as opposed to having him do it?

NK: We basically have him tell what he observed, we write it down in a way that's readable and also keeps with the facts and also doesn't go off tangent.

LS: Is it a protocol of your department for the officer to write the witness' statement and have them sign it?

NK: Yes.

LS: And did Mr. Sterling sign his statement in your presence?

NK: Yes.

LS: Did he have a chance to read it and reflect on its accuracy?

NK: Yes.

LS: Did you tape record Mr. Sterling?

NK: No.

LS: Is there any reason why you didn't do that?

NK: I didn't have a tape recorder.

LS: Can you just give me a minute. Mr. Stern, if you have any follow up, you can -

Rep: Sure.

LS: - invite you to do it now if you want or you can wait until I'm done. I just want to review my notes real quick.

Rep: Go ahead.

LS: I have no further questions, thank you.

Rep: PRC investigator, Officer Simpson, may I ask a couple of questions?

LS: Of course.

Rep: Thank you. Okay, in reviewing your supplemental report that I assume you prepared soon after the incident, it uses the phrase "face down" with respect to the positioning of Ms. Moore's body. Do you want to clarify that, because I'm not sure if that completely comports with your statement?

NK: When I wrote that, I was basically describing the orientation of being placed, you know, with your face or your, you know, body in a downward position, however, it's more appropriate and accurate to say a stomach down position than a face down position.

Rep: Was Ms. Moore's face down at any point or do you know?

NK: Well, her – her face was pointed towards the ground but not down pressed against any object.

Rep: Okay, did it appear that she had the ability to breathe?

NK: Yes.

Rep: All right. Did she ever complain about not being able to breathe at any point?

NK: No.

Rep: And I think Ms. Simpson asked the question and I can't recall if there was a specific time reference associated with it – so I'll ask it again more broadly – at any point did you hear Ms. Moore speak during the incident?

NK: No, not that I recall.

Rep: How about making any noise?

NK: No.

Rep: Okay. All right, in your supplemental police report you described Moore as being "a very large male" –

NK: Yes.

Rep: - did Moore's gender or gender identification change or your affect in a way how you handled this incident, at least your part of the incident?

NK: No.

Rep: I don't have any other questions, thank you.

LS: All right. That concludes the interview. The time is now 7:03 p.m. Officer Kastmiler, thank you for your time and patience today.

NK: Thank you.

ATTACHMENT #8

Witness Officers' Statements

Transcript of Officer Phillips' Interview Page 277
Transcript of Officer Cardoza's Interview Page 295

Transcript of Captain Harris' Interview Page 311

Transcript of Captain Harris' Interview (expert witness)

STATEMENT OF SERGEANT PHILLIPS PRC COMPLAINT #2327

- LS: Lucinda Simpson, PRC Officer
 BN: Byron Norris, PRC Investigator
 AP: Sergeant Phillips, Witness Officer
- JM: Harry Stern, Legal Rep.
- BN: This is PRC Investigator Byron Norris. Today's date is August 29, 2013. Do you have the time?
- LS: It's 11:00 a.m.
- BN: The time is 11:00 a.m. Also present is PRC Officer Lucinda Simpson. I'm here with Sergeant Phillips and she's being represented by –
- Rep: Harry Stern.
- BN: Harry Stern. Sergeant Phillips is a subject officer on PRC complaint #2327.
- LS: She's a witness officer.
- BN: I'm sorry, excuse me, correction, Sergeant Phillips is a witness officer on PRC complaint #2327. Sgt. Phillips, you are here under the provisions and protections of the Lybarger Admonition, having been ordered by the Chief of Police to appear and cooperate with this interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights to against self-incrimination. Pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation, any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding. Sgt. Phillips, are you aware that this interview is being recorded?
- AP: Yes.
- BN: Will you answer the questions today truthfully and to the best of your ability?
- AP: Yes.
- BN: Sgt. Phillips, are you familiar with the events surrounding an alleged incident on February 12, 2013?
- AP: Yes.
- BN: Could you please tell me what was your involvement in this incident?
- AP: I was a patrol supervisor that night. I work in the graveyard shift and I responded to the scene after hearing Officer Brown call for needing more assistance, officer assistance at the location which was 2116 Allston Way.

Case #2327 Sergeant Phillips

Transcribed by Maritza 11-1-13 Reviewed by LS Date 11-5-13 BN: What exactly did Brown, Officer Brown, communicate to you when she called for assistance?

AP: I can't recall the exact words, but she got on the radio and said, "We need more officers here," and her voice – she sounded – it seemed it sounded urgent, so my response to all the other officers was to respond code 3 lights and siren. And I was coming from the station, so I knew it was only a block away.

BN: Okay. Was there any back ground noise from when she called?

AP: Yeah, I recall there was yelling and it sounded like a struggle. It was clear that they needed assistance. Immediate assistance.

BN: Were you able to tell who was yelling?

AP: No.

BN: Do you recall any statements that were made?

AP: No.

BN: Okay. So then you responded to the scene?

AP: I did.

BN: Okay. And what happened when you responded?

AP: When I got there Sergeant Cardoza and I arrived at the same time. We both went into the building together. Someone had left the door open. I can't remember what was – something was obstructing the door, so we were able to get in. We rode up the elevator. Cause it was on the fifth floor, once we got –to the fifth floor, there was a male standing outside that kind of directed us to the apartment. There was an open door – it's the only open door that I can recall in the apartment building, so we went in and we saw I believe four officers that were struggling with an individual when we went inside.

BN: Okay. Do you recall who the male was who directed you to the apartment?

AP: I spoke with him afterwards – after I had exited the apartment. I believe his – might be Mr. Sterling. I think that's who it was. He was standing up like a door away from the apartment.

BN: What did you talk to Mr. Sterling about? What did he talk to you about?

AP: It was – we were running in so it was kind of like he pointed up to the door. There was no discussion of what was going on. We just came in and there's a large open area, tiers of apartments, and so he immediately just pointed to which door it was. So we didn't – we didn't speak then.

BN: And you and Sgt. Cardoza entered at the same time?

- AP: We did.
- BN: You said you saw four officers struggling?
- AP: Yes.
- BN: Who were those officers?
- AP: Officer Brown, Officer Tu, Officer Mathis, and Officer Gardner.
- BN: Was there anyone else involved in the struggle?
- AP: At the time that I entered the room I can't I don't believe so. I think those were the four that were there.
- BN: Okay. And who were they struggling with?
- AP: So I was unable to determine there was an individual mainly nude laying on the floor. I didn't know if it was male or female. The person appeared from back to be female because had long hair, long braids. And I couldn't see the person's face, so I didn't know who it was. I know that I did look at the call before I got there and thought that we were there to deal with a a male, so I didn't know at the time it wasn't clear.
- BN: Could you describe just in detail the struggle what did you see what did you observe?
- AP: So I saw the individual on the bed, the person the officers are struggling with, I don't know for the record, so after learning who Kayla Moore was, I had prior contacts with with with Kayla and I had only known Kayla to be Xavier Moore, father referred to her as Xavier; she responded to us as Xavier; she told me her name was Xavier, so, once I figured out who it was, it was Xavier it was Xavier to me but I will refer to her as Mrs. Moore just out of respect for family and I didn't know the name Kayla at all just to let you guys know before I got there, so.

So Ms. Moore was on the bed. I believe was handcuffed at the time but was violently kind of kicking and resisting with the officers. Officer Brown I recall being up closer to Ms. Moore's head and Officer Tu was up on the – near the upper body as well. I just particularly remember Officer Mathis struggling with Ms. Moore's legs, because he was being kicked. He was being kind of kicked around and was unable to contain her – her legs and feet.

- BN: What position was Ms. Moore in during the struggle?
- AP: On her stomach and I think head facing the wall and, yeah completely on her stomach with handcuffs, two sets of handcuffs I recall behind her back, and I could see the hair and only I couldn't see her whole face, so I could see a portion of her face, but that was that was during the struggle, yeah.
- BN: You said that Officer Brown was near her head area?
- AP: Yeah.

Case #2327 Sergeant Phillips

Transcribed by Maritza 11-1-13 Reviewed by LS Date 11-5-13

- BN: Okay. Was she touching her head?
- AP: I don't know if she was touching her head or shoulder area they were you know with the arms. But there was no one on top of her because I could see a fully-exposed nude body there. It was more everyone trying to hold extremities, so there was two officers I believe up towards the head and middle, and Officer Mathis I remember particularly was by himself with the ankles, trying to restrain the ankles.
- BN: Do you recall if any officers, in their attempt to restrain her, touched her head or neck area?
- AP: No, not that I recall. And I remember them requesting for a spit mask, which I didn't I couldn't see if she was spitting, but they were asking for one, so I was requesting that on the radio for the next officer to bring that.
- BN: You said Officer Tu was he was focused on her upper body what exactly was he doing?
- AP: Honestly, I I I couldn't tell you exactly. I know he was just trying to hold someone near the arms area, the middle portion of the body. My focus was on Officer Mathis, because he was being he had been kicked around and he's a large, you know, he's a large officer and so I was concerned with the main concern seemed to be her legs at the time.
- BN: And are you able to describe in further detail how Ms. Moore was kicking or struggling Officer Mathis?
- AP: Yeah, just violently kicking at him kind of bucking him off of the bed and then he yelled to us, Sgt. Cardoza and I, "Give me the ankle the leg straps I have to restrain her ankles."
- BN: And how was Officer Mathis positioned during this time?
- AP: I think he was, what I recall was him being at the end of the futon holding, trying to hold down over holding down the bottom part of the legs likes the calfs and ankle area, and Ms. Moore was kicking at him, and so he was kind of being thrown back from the bed.
- BN: When he was trying to hold her legs, was he to the rear of her feet or was he on top of her legs?
- AP: I I can't recall specifically. I can't recall.
- BN: You said there were four officers. We talked about Brown, Tu, and Mathis, was there another officer involved in the struggle?
- AP: Officer Kastmiler came in at some point, but I don't recall when. I don't remember if that was after Ms. Moore was already restrained or not, I I don't recall when he when he came in, because officers start to come in-and-out at some point. He's the only other one I rememb- I recall.

 BN: So you said that – was it Officer Brown you said that asked for – I'm sorry, one of the officers asked for the (inaudible).

AP: Officer Mathis.

BN: Officer Mathis.

AP: Yeah.

BN: And then what was your response?

AP: As Sergeant Cardoza and I got into the building, he said, "I have the wrap," which is our restraint device and I said, "Okay." So, when we got in, we immediately took it out of the bag in case they were going to need it. And then Officer Mathis asked for one of us to hand him the leg restraint and I handed it to him.

BN: Okay. And what did he do with it?

AP: He – him and I believe Officer Gardner, they restrained her legs.

BN: Did anyone assist them in restraining her legs with the wrap?

AP: Besides Officer Brown and Officer Tu that were helping, you know, restrain Ms. Moore, I don't think so, I mean I think those were the only four that actually had hands on.

BN: Did you observe them applying the wrap to Ms. Moore?

AP: Just the ankle restraint. They never applied any other portion of the wrap to Ms. Moore.

BN: Are you able to describe how they applied the wrap?

AP: Yeah, they – they held – they held the legs and it's just a piece – it's a long strip of Velcro and they put – held both ankles together and wrapped around and secured it with the Velcro.

BN: Okay. We have some photographs of what we believe is your department's wrap device.

AP: Mm-hmm.

BN: You say that these are – this is your wrap device?

AP: Yes.

BN: Okay. And you referred earlier to some leg restraints that are part of this wrap device.

AP: Yes.

BN: Would you point them out?

LS: There's actually 5 pictures here, unfortunately a couple are on the other side. That wasn't the best.

Case #2327 Sergeant Phillips

Transcribed by Maritza 11-1-13 Reviewed by LS Date 11-5-13 BN: We have some double-sided photographs. Would you please indicate for us the legs straps?

AP: Yeah, this is the ankle strap labeled PRC2.

BN: Okay.

LS: Does it also appear in PRC3?

AP: It does.

LS: Is that –

AP: Just the yellow piece.

LS: This yellow strap —here it's yellow in #3 here it's the velcro side on #2?

AP: Yes.

LS: Is this consistent with the wrap – the type of device that was used on Ms. Moore?

AP: Yes.

BN: So you mentioned ankle strap, so Officer Mathis with the assistance of Officer Gardner applied the ankle and the wrap –

AP: Just the –

BN: - ankle and the leg or just the ankle?

AP: Just the ankle.

BN: Just the ankle.

AP: Yeah.

BN: Restraints.

AP: Yeah. We were pretty certain that due to Ms. Moore's size, we were not going to be able to put the wrap on.

BN: Okay.

AP: And that's – yeah – that's kind of where we –we – I went with ask – requesting for a gurney.

BN: Okay.

AP: So, yeah, we are only able to apply – we didn't even attempt to apply – none of this ever got – handed to the officers – it was only the ankle strap.

- BN: All right. What happened after the ankle straps were applied?
- AP: Ms. Moore at some point, I don't know the timeframe, but was kind of calmed down and was rolled on her left side, and officers kind of just sat by waiting. I had got on the radio and requested for BFD for the Fire Department to bring a gurney, because we knew we weren't we were not going to be able to transport her out of the apartment being on the fifth floor and we just weren't it was going to be impossible. So I requested for a gurney and then we were just waiting for the Fire Department.
- LS: At that time did you make that request code 3?
- AP: I did.
- LS: And why did you do that?
- AP: Because I was concerned with –if there was going to be a continued struggle I wanted them there right away. And the assumption was, if we were getting a gurney, we were also getting paramedics, and, they always come together. So that was kind of what we were just waiting for just in case there be...you know, we needed to get her out. It was a we're on a fifth floor, in an apartment, a lot of officers in a small space, so it was kind of it was a dangerous situation.
- LS: At that time when you made that code 3 request, did you have any reason to believe that she was experiencing any medical issues or difficulty breathing, anything like that?
- AP: No, not for that upon the first request, no.
- BN: Do you know now you said the officers, after they applied the ankle straps of the wrap, and you said Ms. Moore calmed down –
- AP: Mm-hmm.
- BN: and what do you mean by that?
- AP: There was no more resisting or kind of yelling or there was just she was just, you know, kind of laying there and and officers were just kind of sitting there, you know, we were just there standing by in a sense. Everyone kind of just laid there and let her lay on her side.
- BN: Do you know if she was still conscious at that point?
- AP: To my knowledge, yes, yeah.
- BN: Okay. You said that she was rolled over to her side after she calmed down and the ankle straps were put on. When she was turned over was she facing the wall or facing the apartment and the officers?
- AP: She was facing the wall.

BN: Okay. So she was – was she – was she turned away from you? Could you not see her face?

AP: I could see her face, because I walked over into a really small space. When they turned her over to the side, I could see her face facing the wall.

BN: Were her eyes open?

AP: Yes.

BN: Okay.

AP: And she was – and she was breathing – I specifically remember seeing that she was breathing and just –

BN: Yes.

AP: - wasn't fighting or resisting anymore.

BN: So after she was turned over to her side, at that moment where were the officers?

AP: They were still – I don't believe they were – I think everybody kind of just backed up – nobody – I don't remember them applying any other pressure besides just kind of touching and still kind of around her. And at some point I think Officer Gardner got up and walked out and then I was concerned about Officer Tu, because he was – I didn't know if he was injured and he was sweating profusely and – and out of breath.

BN: Yes.

AP: And I asked him if he needed to step outside. And so it was – seemed everything was under control, so I said for him to step outside. I asked other officers like, *Do you know – is everything okay?* and I'm going to send him outside, and so he went outside for a little bit. So at that point it was just like we're waiting and everyone is just – everything was calm at that point.

BN: Okay. So what happened after that?

AP: Officer Tu came back in at some point and Officer Brown I recall saying – was looking over and said, *Xavier*, like, you know, seeing if he was sleeping, and she, Officer Brown said, "Is he breathing?" And I looked over and I said, "Is he breathing?" And I couldn't – we couldn't tell and then I saw Ms. Moore open her eyes and take a breath.

BN: Mm-hmm.

AP: And I got on the radio and I said, "Confirming BFD is coming, code 3. Somebody is having difficulty breathing." And then Officer Brown was still kind of checking and it seemed like I want to say 30 seconds to a minute later, she was no longer breathing – Ms. Moore was no longer breathing. And that's when I got back on the radio and I said, "Subject is no longer breathing; we're going to start CPR." And at this point Officer Tu had come back in and I said, "Take the handcuffs off, roll her on her back," you know,

and then they started CPR. I remember Officer Brown was assisting, with trying to see that the airway was clear and Officer Tu started chest compressions right away.

- BN: Okay. And what do you mean when you say chest compressions?
- AP: CPR, standard CPR chest compressions.
- BN: And how long did he engage in this action?
- AP: It felt like forever.
- BN: I understand.
- AP: I want to say it could've been anywhere from it seems like several minutes 7 to 10 minutes before the Fire Department got to us.
- BN: Okay.
- AP: I don't know. For me in my mind it seemed like forever. And then for him, he was, you know, sweating and profusely I mean he was he was putting in a lot of work and it seemed like it took a long time I mean to the point that I asked if he needed somebody else to step in. So he did several minutes. I want to say anywhere between 5 to 10.
- BN: All right. And after he completed the CPR, what happened?
- AP: He didn't stop; he waited I mean he never stopped chest compressions until the Fire Department arrived.
- BN: Okay, and when they arrived what happened?
- AP: They took over.
- BN: Okay.
- AP: And they told us, you know, we had to clear the room. There was no room for all of us and them and their equipment. And they immediately put on a CPR machine over Ms. Moore's chest and took over.
- BN: Sergeant Phillips, were there any civilians in the apartment at the time of this these events?
- AP: No, when I was there, no.
- BN: Okay, And what was Sergeant Cardoza -
- AP: Cardoza.
- BN: doing while you were while you were there?

AP: He was standing by – we were both, you know, we were both there. There was no room. There was no reason or room for us to get in and be any more involved in, you know, during the restraining. But at some point he – when I started calling for the Fire Department, he left to go assist direct them into the apartment. So at some point he was in-and-out and was waiting for them to get there so that we could get them up to us as fast as possible.

BN: Okay. Do you have any questions?

LS: I'm just going to try to go back.

AP: Okay.

LS: I'm a chronological person –

AP: Yes.

LS: - so - to the best I can be (inaudible) jump around but. When you first came into the apartment in response to the call, did you have any personal knowledge, you know, what had transpired, why the officers were asking for help, and why they were restraining Ms. Moore?

AP: No, the only thing I did was look at the call for service on my computer before I – while I was en route to know – to know what I was going to, and I said – I recall it being something like a disturbance with a 5150, a violent 5150, or something like that. So, I had no other knowledge of what –what else – what had happened once they got there.

LS: Okay. Can you do your best to, you know, describe with a kind of detail that maybe someone who wasn't there could see in their mind what you saw when you walked in? Does that make sense?

AP: Yeah, so when I walked in, I could see a fairly large, nude African-American person with I believe long braids. I didn't know male or female, like I said, and I – and I, like I said, I think four officers, Officers Tu, Brown, and Gardner, and Mathis. The person was kicking and moving and just resisting, and I was – officers were just trying to – seemed like hold this person still, you know, get them from stop fighting and kicking.

LS: What were they using to do that?

AP: Their hands. There was nothing else being used. They were just –

LS: Any feet, knees?

AP: No – not that I recall. I don't know.

LS: Okay. And the resisting, what is that looking like? Visually?

AP: It was looking like a person on a futon in a small space violently kicking and – and shaking and grunting. And I don't remember – there was no words or any- I didn't hear any words or anything, but I just – except for the officer saying, "Stop resisting.

- Stop fighting." And then just seeing Officer Mathis kind of being thrown around by this person's legs and he was just holding on basically.
- LS: When you say he's being thrown around, like –
- AP: Like he's holding on and he's being, you know, he's getting kicked back side to side and and he got at one point before I handed him the ankle restraint, he kind of got kicked back, kicked off, and I remember him kind of letting go at some point and then having to go back to try and contain, hold, hold her legs.
- LS: And earlier when you were describing Officer Mathis restraining or trying to restrain the legs or feet you were gesturing with your hands –
- AP: Yeah.
- LS: Can you describe a little bit about how you were gesturing with your hands –
- AP: Yeah.
- LS: like were you trying to explain how he was holding the –
- AP: Yeah.
- LS: ankles or feet?
- AP: What I recall is him just with his two hands trying to hold down her legs and I don't recall where speci- I know he was at the end of the body by the feet. I don't know if he was trying to sit on her legs or just but all I remember is his hands not being very effective –
- LS: Okay.
- AP: in holding her down.
- LS: And do you recall whether Ms. Moore's body was completely on the futon or part on part off?
- AP: Completely on the futon because they were really close to the wall.
- LS: Okay. And when you first walked in, was Ms. Moore under the control of any officer?
- AP: No. No. I mean like I said, there was she had handcuffs on but was still actively resisting.
- LS: Okay. And you had mentioned that Officer Tu was at the upper portion of the body, what was he doing?
- AP: I want to just say trying to control the arms or trying to control you know I don't I can't recall specifically it was there was a lot of uniforms and I can't recall what what he was doing.

- LS: Okay. And are you familiar with the Training and Information Bulletin 247, it's called *The Wrap Restraint*?
- AP: Yes.
- LS: And have you personally used it –
- AP: Yes.
- LS: on previous occasions before this incident date?
- AP: I have.
- LS: How many times would you say you've used it?
- AP: I'd say probably 10 12 times.
- LS: And have you been trained on use of it?
- AP: Yes.
- LS: Okay. So you had mentioned that Officer Mathis had crossed the ankles, is that right or is that not accurate?
- AP: I think so. I can't remember.
- LS: Okay.
- AP: I think so, though. I think I think they did.
- LS: Okay. Do you know whether like crossing of the ankles is a part of the application of the wrap or, and if you want to look at the Training Information Bulletin, I have it here, but is that something that you have any knowledge about whether it's something you're supposed to do or something you're not supposed to do?
- Rep: Just just to be clear and I certainly might have missed it, I didn't hear her say that...
- AP: Yeah, I didn't say he crossed them.
- LS: Okay. Let me ask you this, in terms of would crossing the legs be inconsistent with your training and experience in applying the ankle restraint?
- AP: I'd have to look at the trai- I I don't I don't know specifically to be honest what I can't recall right now what's the appropriate way with cross- if we're supposed to cross the ankles or not, but I know that there have probably been times where both have happened whether they're side-by-side or crossed.
- LS: Okay. So and also is the wrap something that is this ankle restraint something that can be used by itself or is it required to be used as a full package if you will with this other item in PRC 5—this is the body part I gue- or the part that goes on the legs.

- AP: Normally it's considered to be you know you're supposed to use it altogether, but it's a separate piece from the two –
- LS: Okay.
- AP: in my mind, or you know, in training or opinion is that we would if we needed to use the ankle just to secure someone's ankles, that was an appropriate tool.
- LS: Okay.
- AP: And we knew that the other pieces were not going to be effective at all.
- LS: Okay.
- AP: But sorry to go back to the ankle thing, I want to say generally we we wouldn't cross ankles, because the legs if you're using the whole wrap, usually there's not going to be a lot of room if the person's legs are straight to be able to do that. I don't think they'll have a lot of mobility when applying the whole thing.
- LS: And at any time did you observe any of the officers applying any kind of touching to Ms. Moore's back as she was on her stomach?
- AP: No, and I could like I said I could see her whole back side, including her back and, you know, nude, fully nude body, so, no, I don't I don't recall seeing that at all.
- LS: Okay.
- BN: At any time did you see any of the officers holding down Ms. Moore's head -
- AP: No.
- BN: while she was in a prone position?
- AP: No.
- BN: Okay.
- LS: How much time in your best approximation was Ms. Moore in a prone position in your presence?
- AP: A couple minutes. Um, I, I, I wouldn't be able to say, maybe a couple, two, 1 2 minutes. I'm not sure.
- LS: And at what point after the ankle restraint is put on the ankles was she eventually moved to her side?
- AP: It was immediately after that, so I want to say that that struggle when when I was in there was only a couple minutes, and as soon as that was applied and she calmed down, they, they rolled her right onto her side.

- LS: And how long would you approximate that she was on her side before it appeared that she stopped breathing?
- AP: A couple of minutes, again, maybe 3 or 5, yeah, I'm not sure, 2 to 3, the time it's yeah, it's hard to –
- LS: At some point after the Berkeley Fire arrived, did you have occasion to inquire of Officer Brown, you know, after the fact, why it was that Ms. Moore had been taken into custody?
- AP: Yeah, as soon as they as soon as the Fire Department got there and took over I asked Officer Brown I believe I asked her if Ms. Moore was under arrest or what what did we have or something like that and she said he had a \$10,000 warrant.
- LS: Okay. I don't have any other questions, thank you.
- BN: Sergeant Phillips, at what point while you were in the apartment and observing the interactions with these officers who were attempting to restrain Ms. Moore, did you see the handcuffs applied?
- AP: No, I think they were already applied when I got in there.
- BN: Okay. And how were they applied?
- AP: They were they were she Ms. Moore had both arms behind her back and there were two sets of handcuffs connected together to give, allow for more room for a larger person.
- BN: You said she was on her back?
- AP: Oh, she was on no, she was on her stomach -
- BN: Her stomach.
- AP: and her arms were behind her back, and there were two sets of handcuffs hold-restraining her wrist.
- BN: All right.
- AP: Meaning one one handcuff was on the left arm and one was on the right and those two sets were connected together in the middle to provide for more room.
- BN: And while you were in the apartment, did Ms. Moore make any statements?
- AP: No.
- BN: She didn't say anything, no yelling or screaming?
- AP: There was, you know, just during the struggle like making noises, but not I didn't recall I don't recall making any statements or her saying anything. I heard the officers saying, "Stop resisting," but that was it.

BN: All right. And you said earlier that you thought that Officer Tu had somehow gotten injured?

AP: He looked exhausted -

BN: Okay.

AP: - and I know he's had prior injuries and I wanted to make sure he was okay. He was profusely sweating and just seemed out of breath – he'd been in a struggle for several minutes, so.

BN: Were any of the officers injured by Ms. Moore's actions?

AP: No, not to my knowledge.

BN: All right. You said earlier that you had prior contacts with Ms. Moore?

AP: Yes.

BN: Okay. How many previous contacts would you say you've had?

AP: Just one.

BN: Okay.

AP: It was – probably it would be about a year ago or, yeah, sometime in 2012.

BN: Could you briefly describe that –

LS: Is there anything that's about that prior contact that was relevant to your observations at the scene prior to it ending?

AP: No. No, except for I knew who – who that person was at that point, because like I said that was just – I didn't know walking in – I thought we were dealing with a male and then it goes up, it looked like a female – Ms. Moore – you know, so that was just when I – when Officer Brown told me who it was and they had rolled her on her side, I immediately recognized her of someone I had prior contact with. And, you know, history, with the mental health history, I dealt with the situation with that.

BN: How long have you been employed with the department?

AP: Nine years.

BN: Nine years. Do you have any other question?

LS: I actually forgot to ask you one other question, are you familiar with the Crisis Intervention Team?

AP: Yes.

- LS: And are you a crisis intervention trained officer?
- AP: I am on I've been selected on the team and I will go to training in a couple of weeks.
- LS: Okay. As of the date of this incident, you were not CIT trained –
- AP: No.
- LS: sounds like. Do you know if anyone the team that was involved in this incident was or was not CIT trained?
- AP: No, I believe that our prog- our CIT program was just getting started and was just getting created at the time that this had all occurred, so no one I don't believe anyone had been trained yet.
- LS: Do you know if there are any components of it that were, you know, operational at the time of this incident?
- AP: I believe Officer Shannon who is in charge of our CIT training was just starting the process of creating a CIT team. I'm I'm not I can't recall if he how long ago he started the process but it's but I don't believe anybody had been trained yet.
- LS: Okay. If I can show you the general order C66, it's the Crisis Intervention Team they issued January 24, had you, at the time of this incident, had you been informed of the release of that general order?
- AP: Yes, we would've received that. We get notification when the general orders come out.
- LS: And other than receiving this general order, did you have any other knowledge as to, you know, what components were available for you to use at that time?
- AP: From our department, specifically, no, there wasn't there wasn't anything I thought in effect yet that we were going to be able to use and I'm not sure during that situation it would've even been appropriate given what had transpired I'm not so, yeah.
- LS: Okay.
- BN: Sergeant Phillips, what was your overall role during this incident?
- AP: At the time it was to provide assistance to the officers and then I Sergeant Cardoza ended up being the scene supervisor, because Officer Brown is under his direct supervision.
- BN: Mm-hmm.
- AP: And so I just assisted with him afterwards with kind of scene assignments and then I just went back and made sure Officer Brown and Officer Tu were okay.
- BN: All right. Do you have anything to add that we haven't asked you that you think we should know?

AP: No, just, I mean, I know you asked me about the prior contact I know and nothing about how any of the events transpired that night are relevant except for I did know, you know, Ms. Moore and like I said, I mentioned before, as Xavier, and the mental health history with the family and the drug use and things like that.

BN: Alright. Well that brings us to the end of our interview.

Rep: I have a couple.

BN: Oh, I'm sorry Harry.

Rep: No, no, no – I have a couple questions. Sergeant Phillips, various terms have been used in describing Ms. Moore's body position when you entered the room. One of those I believe was face down, specifically, did you ever see Ms. Moore's face actually in the mattress or pointed in a downward direction?

AP: No.

Rep: And can you expand on that?

AP: No, I – I knew that she was laying on her stomach and – when I first walked in I couldn't see right away, but when I was able to position myself her head was turned to the side, stomach was down, face turned to the side facing the wall.

Rep: Okay. The last question I have for you is – has to do with Ms. Moore's gender identity and it sounded like you had a little bit of confusion just to who you were dealing with when you came in, did any of that have any bearing on how you handled the situation?

AP: No, it wouldn't have make a difference, male or female, it was still a person resisting, and we just had to restrain them.

Rep: I don't have anything else.

LS: The time is 11:35. Thank you.

BN: That brings us to the end of our interview. Sgt. Phillips thank you so much for your time.

AP: Thank you.

STATEMENT OF OFFICER CARDOZA PRC COMPLAINT #2327

LS: Lucinda Simpson, PRC Officer BC: Officer Cardoza, Witness Officer JM: Jonathan Murphy, Legal Rep.

LS: Good morning, this is Lucinda Simpson. I'm the Police Review Commission Officer. Today's date is October 1st, 2013. It's about three minutes before 8:00 a.m. I'm here with Sergeant Ben Cardoza, Badge #S-31 – is that correct, sir?

BC: Yes.

LS: And also present is his Counsel Mr. Jonathan Murphy. Sergeant Cardoza is a witness officer on complaint #2327. Sergeant Cardoza, you are here under the provisions and protections of the Lybarger Admonition, having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. You cannot be required to waive 5th Amendment rights pursuant to the Lybarger Doctrine, because you are being ordered to cooperate in this investigation. Any statements you make during this investigatory meeting cannot be used against you in any subsequent criminal proceeding.

Sgt. Cardoza and Mr. Murphy, are you aware that this interview is being recorded?

BC: Yes.

Rep: I am.

LS: And Sgt. Cardoza, will you answer the questions today truthfully and to the best of your ability?

BC: Yes.

LS: Sergeant, you're employed as a police officer with Berkeley Police Department, is that correct?

BC: Yes.

LS: And how long have you been so employed?

BC: I've been an employee with the City of Berkeley for – since July 12th of 1999 and I was sworn in, in December of '99, so almost 14 years as a sworn officer.

LS: Any prior experience as a police officer?

BC: No.

LS: And can you just briefly describe the different assignments or positions that you held during your career as an officer?

Case #2327 Sergeant Cardoza

Transcribed by Maritza 10-31-13 Reviewed by LS Date 11-1-13

- BC: I've worked as a patrol officer and a motor officer and now I'm assigned to as a patrol supervisor.
- LS: Were you working as a patrol sergeant on February 12th of 2013 just before midnight?
- BC: Yes.
- LS: Prior to going into the incident that we're going to talk about today, I want to ask, are you familiar with something called the Crisis Intervention Team?
- BC: Yes.
- LS: And to your knowledge what is a Crisis Intervention Team?
- BC: To my knowledge it is a group of officers who have I guess more training in dealing with both narcotics and mental, I guess instabilities or mental issues.
- LS: And are you familiar with your department's general order C66 called Crisis Intervention Team?
- BC: Yes.
- LS: And looks like on this order it says date of issue January 24, 2013, does that ring a bell?
- BC: Yes.
- LS: Okay. And prior to February 12, 2013 had you become were you aware of the existence of C66, the general order?
- BC: Yes.
- LS: How did you learn about its creation or it coming into existence?
- BC: It was I'm trying to think how to describe it one of our officers, Shannon, is I guess the founder of the I guess designer of this program, and he had come around and I believe talked to the patrol teams and just general information through via City email.
- LS: Was there any kind of a formal training prior to February 12 of this year?
- BC: I don't recall.
- LS: Okay. Was there any kind of a briefing prior to February 12 on this general order?
- BC: There may have been some briefing training, but I can't say for sure.
- LS: Okay. And as of February 12 of this year, were you yourself a CIT trained member?
- BC: No.

- LS: And on February 12 of this year were you aware of any other CIT trained officers within your department?
- BC: I think other than Officer Shannon, no.
- LS: No, you were not aware or you didn't think that there were any?
- BC: I I wasn't I can't say.
- LS: Okay. And as of February 12 of this year, were you aware of whether the CIT team was what's called operational?
- BC: I think they were still forming and they were still getting applicants and training officers, because I know a lot of officers have just completed their training within the past several months.
- LS: So on February 12 of this year, did you happen to get a call from dispatch or some kind of a call for help?
- BC: Yes.
- LS: Can you describe what information you learned?
- BC: It was an off well, I don't quite understand what you're asking.
- LS: Did you at some point, when you were on patrol, get a call for to provide assistance?
- BC: Yes.
- LS: Can you describe what you were told or what transpired?
- BC: An officer on the scene of the call on Allston asked for code 3 cover.
- LS: Were you one of the original responding officers or did you go there later?
- BC: I went there later.
- LS: Okay. When you ended up going there, were you aware of the original nature of the call?
- BC: I believe so.
- LS: And can you describe what that was?
- BC: I think it was a disturbance with a possible schizophrenic individual I think off their medications and possibly intoxicated.
- LS: Did you have occasion to go to 2116 Allston Way in Berkeley?
- BC: Yes.

- LS: Did you see any other officers when you arrived?
- BC: There were several other officers there.
- LS: Okay, did you go up to a particular apartment?
- BC: Yes.
- LS: And did you happen to ride the elevator with anyone else?
- BC: Yes.
- LS: Who was that?
- BC: Sergeant Phillips.
- LS: Did you bring any equipment with you?
- BC: I brought a wrap.
- LS: And why did you bring that with you?
- BC: I can't recall whether the officers asked for it or I brought it just in case.
- LS: Okay. Do you have any recollection of someone asking for it?
- BC: I don't recall either way.
- LS: And did you enter the apartment?
- BC: I think I made it just past the threshold and that was it.
- LS: What did you see when you went in the threshold?
- BC: I saw several officers attempting to restrain a large individual on I guess what was a mattress on the floor in the main room of the apartment.
- LS: Did it later come to your understanding that the person that was being restrained by the officers was a person by the name of Xavier Moore?
- BC: Yes.
- LS: And for the purposes of this interview only, would it be all right if I refer to Xavier Moore as Ms. Moore?
- BC: Sure.
- LS: What was Ms. Moore doing when you saw her when you first walked in?
- BC: She was actively resisting and fighting the officers.

- LS: Was she doing anything with her legs?
- BC: She's attempting to kick the officers.
- LS: And how was she positioned in relation to the mattress, her body?
- BC: Face down.
- LS: And when you say face down, you're talking about prone position?
- BC: Yes.
- LS: And by prone you mean on the stomach?
- BC: Yes.
- LS: Which officers did you initially observe with Ms. Moore?
- BC: I believe it was Officer Mathis, Officer Tu, and Officer Brown, and I don't know if there were more than that.
- LS: And what were they doing?
- BC: Attempting to restrain.
- LS: Can you describe what specifically what each one was doing in their attempts to restrain?
- BC: I believe the only one I can recall was Officer Mathis was attempting to restrain the legs.
- LS: And what was he doing with the legs? How was he trying to do that?
- BC: I think he was just trying to hang on to them.
- LS: Using?
- BC: Just his hands and I think his weight.
- LS: And when you say his weight, what do you mean by that, how was he using his weight?
- BC: Just I can't describe it trying to physically hang on to.
- LS: Was he using one hand or two hands?
- BC: I don't recall.
- LS: And do you remember what part of Ms. Moore's legs he was trying to restrain?
- BC: No.

- LS: Do you recall if it was above the waist or below the waist?
- BC: I don't recall.
- LS: Do you know just the general location of where Brown was in relation to Moore's body, like the head versus the feet?
- BC: I couldn't say.
- LS: And what about Officer Tu, same question.
- BC: No.
- LS: No?
- BC: I don't I couldn't say.
- LS: Okay. When you entered the apartment and you saw Mathis, Brown, and Tu trying to restrain Ms. Moore, did you know why they were trying to restrain her?
- BC: No.
- LS: And do you remember if Ms. Moore was saying anything or making any noises?
- BC: I believe she was screaming.
- LS: And were you able to any words coming out that you –
- BC: Not-
- LS: can describe?
- BC: not that I recall.
- LS: Okay. And you mentioned there were some other officers there, who were those officers?
- BC: I I don't know if there were more officers or not. I know Sgt. Phillips and I were there and those were the only officers I can remember by name that were there.
- LS: When you initially walked into the apartment and made the observations that you did, would you describe Ms. Moore as being compliant?
- BC: No.
- LS: Why not?
- BC: She was actively resisting, actively fighting, attempting to kick the officers.
- LS: Was Ms. Moore handcuffed when you first arrived?

- BC: No.
- LS: She was not?
- BC: I don't believe so.
- LS: Okay. And then at some point was she were the officers able to get her in handcuffs?
- BC: Yes.
- LS: During the time that you were in the apartment and you were making observations, did you see any officer apply any pressure to Moore's body with a knee or a foot?
- BC: No.
- LS: Did you see any officer apply any pressure to her head of face area?
- BC: No.
- LS: Did you see any officer apply any pressure or contact to the back of her upper body?
- BC: No.
- LS: And with regard to the wrap, if I can show you what's marked here is PRC they're photos 1 through 5, can you tell me if you recognize these as depicting a wrap that is the same kind of wrap that's used by your department?
- BC: Yes.
- LS: And do these pictures depict the same apparatus or device that you ended up bringing up to the apartment?
- BC: I can't say for sure; we have several I guess vintages of them –
- LS: Okay.
- BC: but they all function the same.
- LS: Okay. Is there anything about what you're seeing in these pictures that you think would be markedly different –
- BC: No.
- LS: from the one that you brought?
- BC: No.
- LS: And are you familiar with Training and Information Bulletin 247, the Wrap?
- BC: Yes.

- LS: And are you personally trained on using the wrap?
- BC: Yes.
- LS: How many times would you say you've personally put it on someone prior to February of this year?
- BC: I have no idea (laugh).
- LS: Can you give me a ballpark, like more than ten, less than ten?
- BC: More than thirty.
- LS: Okay. And did someone try to put the wrap on Ms. Moore?
- BC: I think they started but never were able to complete it.
- LS: Okay. Was any part of it put on Ms. Moore?
- BC: Yes.
- LS: Which part?
- BC: The ankle restraint.
- LS: Okay. And if I can show you what's marked as peoples, I'm sorry, PRC 3, at the bottom above the feet there's a yellow strap, is that the strap we're talking about?
- BC: Yes.
- LS: Does it normally go on the outside like that or how is it normally applied, the strap?
- BC: How do you mean?
- LS: What order is it put on?
- BC: It's usually the first thing put on.
- LS: So in this picture it looks like it's on the outside of the –
- BC: They're two separate pieces and usually there's this does not go all the way down to the ankles –
- LS: Okay.
- BC: so, there is space -
- LS: Okay.
- BC: if that makes sense.

Case #2327 Sergeant Cardoza

LS: Yes, so it looks like you're referring to sort of this big piece that goes up the leg area and it has three straps on it, and you're saying it doesn't go all the way down?

BC: Yes.

LS: Okay.

BC: I mean it's all pending body size.

LS: Okay, so the piece that we're talking about that goes on the legs, is that in PRC 5?

BC: Yes.

LS: All right. So was any portion of the wrap put on Ms. Moore?

BC: Of this part?

LS: You're pointing to PRC 5?

BC: Yes.

LS: Was that part put on in PRC5?

BC: Not that I saw.

LS: Okay, was there any other part?

BC: Just the ankle strap.

LS: All right, and you're pointing to PRC3, the yellow strap above the feet?

BC: Yes.

LS: And who put that on?

BC: I don't remember.

LS: How many officers did it take to put the ankle strap on?

BC: I can't say.

LS: And can you tell me who assisted in putting it on?

BC: I don't – I don't know.

LS: Was it eventually put on Ms. Moore's ankles?

BC: Yes.

LS: And what happened if anything after the ankle strap was put on?

BC: In terms of what?

LS: In terms of Ms. Moore's demeanor or conduct.

BC: Nothing.

LS: Was there any change?

BC: No.

LS: What was she doing after it was put on?

BC: Still actively resisting the officers, attempting to kick the officers.

LS: When the ankle strap was put on, how was Ms. Moore positioned?

BC: I think the same, prone.

LS: Did you personally assist in trying to restrain Ms. Moore at any time?

BC: No.

LS: Did you ever place your hands on Ms. Moore's person?

BC: No.

LS: Did you hear Ms. Moore make any statements in your presence about having any difficulty breathing?

BC: No.

LS: Did you hear Ms. Moore make any statements in your presence about experiencing any kind of medical distress?

BC: No.

LS: At some point is a gurney requested?

BC: The Fire Department is requested with a gurney.

LS: Was a medical evaluation requested as well?

BC: Yes.

LS: And what was the reason for that, if you know?

BC: I think it was the nature of her combativeness and the possible – there may be a possible medical issue involved.

Rep: Just really quickly, are you the one that requested the medical assistance?

BC: No.

Rep: So that was speculation –

BC: Yeah.

Rep: - as to the purposes of the officers -

BC: Right.

Rep: - but you're not sure.

LS: Someone else called for the –

BC: Yes.

LS: Okay. At the time you learned that this had been requested, that the gurney had been requested, did you have any reason to believe that Ms. Moore was in failing health or was experiencing a medical emergency?

BC: No.

LS: Did the resistance of Ms. Moore have anything to do with why – in your training and experience – would the resistance that Ms. Moore was using have any bearing on why you would call for medical?

BC: I don't understand your question.

LS: Would someone's combativeness or resistance, would that be a factor in you wanting to call medical to arrive to the scene?

BC: Every scenario is different, so I can't -

LS: Okay.

BC: - answer that.

LS: All right. If I can direct your attention to page 10 of your interview, line 447, you were asked, starting on 445 going through 448.

Question: Do you know why specifically a gurney was requested?

Answer: Because of Moore's size and I believe combativeness there was no way he was going to be walked out of the—

and then the sentence ends, you mentioned *combativeness*, why would that be a factor in requesting a gurney?

BC: Because I guess – it's speculation to this – but the fact that the size, the active resistance and the fact that I guess a wrap was attempting to be applied, it would've been very difficult for officers to I guess transport him out of the apartment or remove him from the apartment.

LS: During the times that you were in the apartment and you saw Ms. Moore positioned on her stomach, can you tell me how her face was positioned during the times you saw her on her stomach?

BC: I don't recall.

LS: Did you see her mouth or nose making contact with the mattress?

BC: I don't know.

LS: And in your best approximation, how much time passed from when you entered the apartment to when the ankle strap was put on Ms. Moore?

BC: I have no idea.

LS: How long was Ms. Moore on her stomach in your presence?

BC: My guess is probably somewhere around 5 minutes, if that.

LS: And at any time when she was on her stomach in your presence, was she compliant?

BC: No.

LS: After the ankle strap was put on Ms. Moore's ankles, were any officers in continued physical contact with her, touching, holding, restraining her in any way?

BC: I believe so.

LS: Can you describe what you saw in that regard?

BC: I can't say for sure. I know, actively resisting and still fighting the officers, so.

LS: At any time did you see any of the officers attempt to monitor Ms. Moore's vital signs while she was in a prone position on her stomach?

BC: No.

LS: At some point did you leave the apartment?

BC: Yes.

LS: And why did you do that?

BC: I went down to meet the Fire Department.

LS: And had the ankle strap already been put on?

BC: Yes.

LS: How soon after the ankle strap was put on did you leave the apartment?

- BC: I can't say pretty soon.
- LS: And how was Ms. Moore positioned at the time that you left the apartment?
- BC: Still prone.
- LS: And was she compliant when you left the apartment?
- BC: No.
- LS: What was she doing when you left?
- BC: Same, nothing had changed.
- Rep: Just for the record, by same you mean actively resisting?
- BC: Yes.
- LS: Where did you go when you left the apartment?
- BC: Down the elevator to the front of the building.
- LS: And what were you doing out there?
- BC: Just waiting for the Fire Department.
- LS: When you were waiting out there, did anything unusual come to your attention?
- BC: As I believe as the engine rolled up, I heard over the radio that officers were initiating CPR.
- LS: And prior to you leaving the apartment, had you become aware of any information or observations to suggest that CPR would be needed?
- BC: No.
- LS: And after you went downstairs and then you became aware that CPR was being administered, what did you do then?
- BC: I advised the Fire Department of I guess the update in the situation and escorted them back up to the apartment.
- LS: And what did you see when you came back into the apartment?
- BC: That Moore was on his back. I believe the handcuffs were off and Officer Tu was doing chest compressions.
- LS: Was Ms. Moore still on the mattress?
- BC: I don't think so.

- LS: And was the ankle strap still on?
- BC: I don't know for sure. I think it was.
- LS: I'm sorry.
- BC: I think it was.
- LS: Would it refresh your recollection if you refer to your earlier interview?
- BC: Sure.
- LS: I think it's page 13, lines 580 to 583.
- BC: Yeah, it was still on.
- LS: So, just for clarification, the ankle strap was still on?
- BC: Yes.
- LS: Was it removed in your presence?
- BC: I don't remember.
- LS: Aside from Officer Tu administering CPR, were there any other officers in physical contact with Moore?
- BC: I don't know.
- LS: At some point did paramedics take over and remove Ms. Moore from the apartment?
- BC: Yes.
- LS: And after that happened, did you have occasion to speak to any other officers or overhear any other officers make any statements about why Ms. Moore was being taken into custody?
- BC: From what I recall I believe it related to an outstanding warrant.
- LS: Do you remember where that statement came from or who had mentioned it?
- BC: No.
- LS: Sergeant, I have no other questions, is there anything you want to add or clarify?
- BC: No.
- Rep: You just to clarify you qualified your five minutes on the stomach as a guess?
- BC: Yes.

Rep: Okay, so a little bit bigger of a window than saying an approximation, you're not really clear, but if you had to give a number it was five minutes?

BC: Yes.

Rep: Okay. And I was going to follow up about the gurney, but I think counsel for the PRC did a good job with that. So I think that's all the questions I have as well.

LS: All right, that concludes our interview. The time is 8:22. Thank you for your time.

BC: Mm-hmm, thank you.

STATEMENT OF CAPTAIN HARRIS PRC COMPLAINT #2327

BN: Byron Norris, PRC Investigator

CH: Cynthia Harris, Captain

BN: This is PRC Investigator Byron Norris. Today's date is December 4, 2013. The time is 12:40 p.m. I'm here with Captain Harris. Captain Harris is a witness officer on PRC complaint #2327. Captain Harris is here under the provisions and protections of the Lybarger Admonition, having been ordered by the Chief of Police to appear and cooperate with the interview and investigation under threat of discipline. Captain Harris, are you aware that this interview is being recorded?

CH: Yes.

BN: Will you answer the questions today truthfully and to the best of your ability?

CH: I will.

BN: Your statement today and the information you provide to the Police Review Commission will be important in determining whether the allegations are true. Captain Harris, how long have you been employed with Berkeley Police Department?

CH: So I've been employed there 38 years.

BN: Okay. And what's your current position with the department?

CH: I'm a captain in charge of the Professional Standards Division.

BN: And what are the responsibilities of the Professional Standards Division?

CH: So, I'm in charge of the personnel and training unit, which is responsible for hiring and training. I do audit and policy as part of that. We monitor injuries and a host of other things, and I work very closely with the Chief of Police.

BN: I invited you here today to primarily ask you some questions about the Crisis Intervention Team General Order Policy C-66.

CH: Okay.

BN: I have a copy of that policy in front of me. And it looks like the issue date was January 24, 2013?

CH: Yes.

BN: Is that accurate?

CH: That is accurate.

Case #2327 Captain Harris

Transcribed & Read by MGM 12-9-13 Reviewed by BN 12.10.13 BN: Okay. Is this the first iteration of that policy?

CH: No. So although the date on the policy is January 24, 2013, it wasn't circulated department wide until January 30th.

BN: January 30th.

CH: Mm-hmm.

BN: But prior to January 24th, was there another version of this policy or is this the first –

CH: This is the –

BN: - written version?

CH: This is the first written version –

BN: Of this policy.

CH: - of this policy.

BN: And you said this policy was issued on January 30th?

CH: Right, so, let me go back and give you the sequence of events.

BN: Okay.

CH: So, the actual order was written on January 24th, was not issued, circulated, until January 30th. The team actually went into effect and was operational on January 20th which was probably a Sunday, since we start our work week on a Sunday. So that was the sequence of events.

BN: Okay.

CH: And then on January 31st – I want to say it's January 31st, I think I'm correct in that – an email was followed up reminding all employees when to call for a CIT officer.

BN: So the policy was issued via email department wide on January 30th.

CH: Yes.

BN: And then another email went out on January 31st explaining to them when they can utilize the CIT team?

CH: Right.

BN: Is that accurate?

CH: That's accurate, yes.

BN: On January 30th – and I think I said department wide when I said that the policy was issued.

CH: That's correct.

BN: Was that a correct statement?

CH: That's correct.

BN: Okay, so all officers -

CH: All officers and professional staff.

BN: And did that include the dispatchers?

CH: Yes.

BN: And on January 31st when the follow up email went out, that also went to all officers and dispatchers?

CH: It did.

BN: Okay. You said that the – if I heard you accurately – the CIT team itself came into existence on January 20, 2013?

CH: January - yes.

BN: Okav.

CH: Yes, became operational.

BN: And who was on that team?

CH: That – I don't have that information in front of me. I do have the name of the officers who had completed training as of February 12th.

BN: As of the date of our incident.

CH: Yes.

BN: Okay and who were those officers?

CH: Okay so that would've been Officer Melissa Kelly, Officer Jennifer Coats, Officer Jessica Nabozny, Officer Steve Burcham, Officer Stephanie Cole, Officer Jeff Shannon, Officer Robin Fuentes, Officer Eric Keene, and Officer Matt McGee.

BN: Do you know how many officers, other than the ones you just named, received training prior to February 12th?

CH: That would've been all of those that would've been trained. So, they may have received it before February 12th because some people received training late 2011 – September and October 2011 – and even some in July 2011.

BN: Okay.

CH: Mm-hmm.

BN: You don't recall who those other officers were that received training prior to February 12, 2013?

CH: That – that would've been inclusive of the list I gave you. That would've been –

BN: That -

CH: That would've included those folks –

BN: Okay.

CH: - that were trained prior to February 12th.

BN: All right. So in addition to those officers you named, there were no additional officers -

CH: No.

BN: - trained prior to -

CH: No, those were the only officers that were trained.

BN: All right. And what kind of training did they receive?

CH: So, they went to a 38-hour training sponsored by the Oakland Police Department, and I don't have the information about the curriculum there, but it's a POST-certified training as far as I know.

BN: So, as of February 12, 2013 would it be accurate to say that the CIT team comprised of the members you listed was operational as of February 12th?

CH: It was.

BN: Okay.

CH: With those members trained, so there were nine officers trained.

BN: All right. What was the operational schedule of that team?

CH: Whatever shift they were working, so some would've been working in different shifts.

BN: Okay.

- CH: So this is an ancillary duty; so this is not a primary duty; so, if they were assigned to a particular patrol team, then that's where they were assigned with these ancillary duties, if they were available to respond.
- BN: And you said earlier that there was an email that went out on January 31st informing staff department wide of when they could utilize the CIT team.
- CH: Mm-hmm.
- BN: What was in that email? What information was provided?
- CH: So it would it stated that a CIT officer would be automatically dispatched to the following calls as calls involving actively suicidal subjects, calls normally dispatched as violent, 5150s and that's people that are exhibiting signs of mental illness and are a danger to themselves or others) incidents involving suspected mentally ill subjects with a weapon, and hostage situations or barricaded subjects until relieved by the special response team.
- BN: Were the staff, department wide, provided information as to when in terms of the time frame that they could request these officers, like, who is on duty, you know.
- CH: That's how it's done, so it would've been whoever was available on duty –
- BN: Okay.
- CH: at the time of the call. So, you know, many times there would not be an officer on duty at the time that a call came in.
- BN: So what would a non-CIT team member who would want to utilize the services of a CIT member what would they have to do to find out if that member is on duty?
- CH: They would ask the dispatcher is there a CIT officer on duty.
- BN: Okay. And they were advised to do that?
- CH: I believe they were, yes, mm-hmm.
- BN: Do you know if any of the CIT team members were on duty on February 12, 2013 around the time of this incident about 11:49 p.m.?
- CH: So based on the rosters that I checked, no, there weren't any on duty.
- BN: I just want to go back you said the policy was issued department wide the General Order C-66 on January 30th.
- CH: Yes.
- BN: And in what form was the policy issued?
- CH: It was sent out via email, so G-O, General Order C-66 -

BN: So they got a copy of the -

CH: Yes.

BN: - general order that I have in front of me -

CH: Yes.

BN: - dated January 24th -

CH: 24th, mm-hmm.

BN: - 2013. All right.

CH: Yes.

BN: And what kind of training or information did the non-CIT staff receive? I understand that you said earlier that they received an email letting them know that the team was operational, and when they could call them did they receive any other type of training?

CH: I – so I believe that the patrol teams received roll-call training, which means that Officer Jeff Shannon would've went to the respective teams just to let them know about the CIT training; but none of that was formalized, so I don't have any formal training records as to what actual information was given. That's why we had this email sent out as well.

BN: And you mean the email –

CH: Of January 31st. So he would've just followed up with that and talked about what the team was and what their goal was and so forth.

BN: And what's Officer Shannon's relationship to this team and policy?

CH: He is the coordinator of the team –

BN: Mm-hmm.

CH: - in addition to his patrol duties, so it's an ancillary duty also for him.

BN: Captain Harris, do you have anything to share with us that you think we should know about this policy and the CIT team?

CH: I don't - other than to say that, you know, we're still trying to train up more employees, more officers on this team - but not in regards to this case, I don't have anything else to add.

BN: Captain Harris, that brings us to the end of our interview. The time is now 12:52 p.m. Thank you for your time.

CH: Thank you.

ATTACHMENT #9

Applicable BPD Department Policies

Police Regulations – Ch. 4:

Duties and Responsibilities of the Ranks and

Department Organization

General Order C-66:

Crisis Intervention Team

General Order U-2:

Use of Force

Training and Information Bulletin #247:

"The Wrap" Restraint

General Order H-6:

Handcuffing and Temporary Restraint

Systems

Training and Information Bulletin #234:

Sudden In-Custody Deaths

General Order W-4:

Arrest Warrants

General Order I-16:

Mentally Disordered Persons

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DUTIES AND RESPONSIBILITIES OF THE RANKS AND DEPARTMENT ORGANIZATION

General Responsibilities of Officers and Employees: It shall be the duty and responsibility of each officer and employee to fulfill to the greatest extent possible the functions of the Police Department and the bureau, division or unit to which one is assigned and to perform any duty assigned by a superior officer. An officer's and employee's work performance shall be in keeping with the focus of the Department's Mission Statement and the concept of Community Involved Policing. The main goals of the Quality Service, Community Engagement and Problem Solving shall be the foundation upon which all action is based.*

- PR 401 <u>Individual Responsibilities of Officers and Employees</u>: Each officer and employee of the Department is individually responsible for:
 - a. The proper execution of assigned duties.
 - b. The prevention of crime.
 - c. The suppression of crime.
 - d. The enforcement of laws.
 - e. The arrest of offenders, depending upon the nature of his/her specific assignment.
 - f. Maintenance of proper public relations.
 - g. Maintenance of discipline.
 - h. Adherence to rules, regulations, orders and Departmental procedures.
 - Enforcement of rules, regulations, orders and procedures among subordinates, depending upon the nature of his/her specific assignment.
 - j. Promptly reporting through channels developments that may adversely affect public or official relations.
 - k. Initiating police action when necessary.
 - I. The proper care and use of Departmental equipment, supplies and facilities.

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PR 402 Responsibilities of Supervisory Officers and Supervisors: Each supervisory officer and supervisor, in addition to the general and individual responsibilities of each officer and employee, shall be responsible for:

- a. The detailed inspection of all activities of the employees under one's supervision.
- b. An intimate knowledge of the duties and responsibilities of one's subordinates.
- c. Proper performance of duties and adherence to policies and procedures by each member of one's unit.
- d. The enforcement of rules and regulations among members of one's unit.
- e. Working as closely with one's subordinates as time and area permit.
- f. Providing leadership in carrying out police activities.
- g. Coordination of effort when more than one employee is involved and the proper assignment of duties to each person.
- h. Functional supervision of employees not directly supervised.
- i. Detailed training on the job as necessary to insure efficient operations by one's subordinates.
- j. The effective operation of one's unit.
- k. Providing command to members of one's division as necessary in the absence of divisional command or a ranking officer.
- PR 403 Responsibilities of Commanding Officers: Each Commanding Officer, in addition to the general and individual responsibilities of each officer, employee, supervisory officer and supervisor, shall be held responsible for:
 - a. The proper direction and control of personnel under one's command.
 - b₁ The maintenance of discipline among members of one's command.
 - c. Proper performance of duties and adherence to policies and procedures by each member of one's command.

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- d. The enforcement of rules and regulations among members of one's command.
- e. Providing supervision and command to members of other divisions as necessary.
- f. The proper discharge of detailed divisional responsibilities.
- g. The proper condition and maintenance of quarters assigned to one's command.
- h. The proper maintenance, use and operation of equipment, supplies and materials assigned for divisional use.
- i. The prompt initiation of employee, supervisory, or administrative action when necessary to fulfill a functional responsibility of the Department when such action is not otherwise being taken.
- j. The effective operation of one's division or unit.
- k. Providing for continuation of command and/or supervision in one's absence.
- I. Preparation of correspondence pertaining to activities of the division.
- m. Complete Duty Command assignments as scheduled.

Police Department are the maintenance of law and order in the City; the enforcement in the City of all laws of the United States and the State of California, and all Ordinances of the City, except when such enforcement is by such law, Ordinance, or the Charter of the City made the responsibility of a state or federal agency or officer; the administration of the City jail and the care, custody and control of prisoners; the performance of such other functions as may be assigned by the City

Manager or prescribed by Ordinance of the Council or by applicable State law.

Section 2.64.020 of the Berkeley Municipal Code provides that "...The Chief of Police, subject to the approval of the City Manager, shall organize and maintain such divisions in said department as the operations may in his judgment require."

Functional Responsibilities of the Police Department: The functions of the

PR 404

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In conformity with this legislation, the Department is divided into five major units, with sub-units as indicated below, all of which are responsible to the Chief of Police.

- 1. Office of the Chief
 - a. Chief of Police
 - b. Internal Affairs Bureau
- 2. Administrative Division
 - a. Accreditation Program
 - b. Bureau of Inspection and Control
 - c. Personnel and Training
 - Underwater Search & Recovery Team (US & R)
- 3. Patrol Division
 - a. Barricaded Subject/Hostage Negotiation Team
 - b. Community Services Bureau (transferred to Patrol Division 6/21/92)
 - c. Crime Analysis/Violence Suppression Unit
 - d. Crowd Management Team
 - e. Field Training Program
 - f. Foot Patrol
 - g. Patrol Teams
 - h. Police Reserves
 - i. Special Enforcement Unit
 - j. Telephone Report Team
- 4. Support Services Division
 - Detective Bureau
 - Homicide

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- 2. Property Crimes
 - a. Auto Theft
 - b. Forgery/Fraud
- 3. Robbery
- 4. Sex Crimes
- 5. Youth Services
- b. Service Bureau
 - 1. Identification Unit
 - 2. Information Management
 - 3. Jail Operations
 - 4. Property Unit
 - 5. Public Safety Communications Center
 - 6. Records Unit
 - 7. Report Review
 - Data Entry Operations
 - Report Transcribing
 - 8. Warrant Detail
 - 9. Telecommunications Center
- 5. Traffic Division (established 7/1/90)
 - a. Traffic Bureau
 - Traffic Enforcement Unit
 - Traffic Analyst
 - Commercial Enforcement/Tow Officer
 - Berkeley Junior Traffic Police/Adult Crossing Guards

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- b. Parking Bureau
 - Parking Enforcement
 - Meter Repair & Maintenance
 - City Garages
 - Center Street Garage
 - Berkeley Way Lot
 - Oxford/Fulton Lot
 - Sather Gate Garage
 - Elmwood Lot

PR 405 OFFICE OF THE CHIEF

Administered by the Chief of Police

a. Chief of Police

Function: To set objectives for the Department; make plans; develop procedures; organize and reorganize; provide for staffing and equipping the Department; adopt rules and regulations for the administration, discipline, equipment and uniforms of the members and officers of the Department, fixing powers and duties, and prescribing the penalties for violations of any such rules and regulations, and providing for their enforcement; inspect, assign and promote personnel; coordinate efforts and relationships, establish policies, report on Department accomplishments; maintain good public, employee and official relations; develop the Departmental budget; provide general direction for the Department; and keep the City Manager informed of incidents or developments that may adversely affect public or official relations.

Internal Affairs Bureau

Administered by two Sergeants who are directly responsible to the Chief of Police.

Function: To investigate citizen complaints alleging misconduct by Police Department personnel and to investigate internally originated personnel complaints as assigned by the Chief of Police; coordinate the Department's Board of Review process; assist the City Attorney's Office in the investigation of civil claims against the

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Department and/or its employees; assist the City Attorney's Office in the preparation and presentation of Pitchess Motions; act as liaison with the Office of the City Attorney, the Police Review Commission and legal defense attorneys; prepare correspondence relating to personnel complaints and disciplinary actions; and advise the Chief of Police on matters relating to discipline and issues of liability and training as they relate to the disciplinary process.

PR 406 ADMINISTRATIVE DIVISION

Administered by a Captain who is directly responsible to the Chief of Police.

a. <u>Administrative Bureau</u>

Administered by a Captain who is directly responsible to the Chief of Police.

Function: Cooperate with City Personnel Department in the preparation and conduct of recruit and promotional examinations; process leaves of absence, terminations and retirements; process service rating reports on all probationary employees and Performance Evaluation reports on all non-probationary employees; provide administrative processing of disciplinary sanctions taken against members of the Department; participate as member(s) of Departmental Boards of Review dealing with personnel complaints: develop and control employee incentive programs; develop, compile and disseminate information pertaining to the promotion of health, welfare and morale of police personnel: schedule examinations with contractor administering fitness program; maintain Departmental personnel files and develop personnel data as requested by the Chief of Police; compile Department strength and assignment reports on a monthly basis from data received from other units.

Accreditation Program

Administered by a Lieutenant who reports directly to the Administrative Division Captain.

Function: To coordinate the Department's accreditation effort; to maintain Departmental orders, regulations and manuals; to administer the Career Development Program; to maintain Departmental Affirmative Action statistics; to compile the Departmental Monthly Management Report for the Chief of police (to the City Manager); to investigate and prepare reports of claims

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for damage to uniforms; to maintain the Special and Temporary assignment rotation file; to coordinate the Department's involvement in the City of Berkeley Project Management System; to coordinate and track the Department's participation in the City of Berkeley quarterly Performance Measures program; handle other staff assignments and special projects as assigned by the Administrative Division Captain; to assist the Administrative Division Captain as assigned.

b. Bureau of Inspections and Control

Administered by a Lieutenant who is directly responsible to the Administrative Captain.

Function: To plan and conduct research; prepare surveys, studies and projects; schedule visits of outside and foreign officials who are studying local police procedures; originate and respond to correspondence; draft replies to questionnaires, and other outside inquiries; coordinate the preparation of the annual budget; monitor budget expenditures; develop and assist in the administration of grant programs; audit medical expenses incurred by the Department in its investigative and custodial activities; perform staff inspections/audits of all functional areas of the Department; plan, coordinate, prepare and write the Special Order for the bi-annual inspection of the Department; act as Adjutant for the Departmental Annual Inspection; handle other staff assignments and special projects as assigned by the Administrative Captain.

Personnel and Training

Administered by a Sergeant who is directly responsible to the Administrative Captain.

Function: To administer reimbursement monies from California Peace Officer Standards and Training (POST) Commission, maintaining close liaison with City Auditor in this accounting responsibility; process expense accounts for Police personnel; to assist City Personnel Department in the preparation and conduct of recruit examinations; conduct pre-employment personnel investigations; to develop and direct Departmental training programs, including scheduling mandated and job-specific training, both in-house and outside; maintain liaison with other police agencies on matters of personnel and training, and arrange for the interchange of teaching materials and instructors; collect pertinent information for police training files; prepare and issue Departmental Orders concerned with personnel, training and administrative matters; assist in the preparation and issuance of Departmental

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Training Bulletins; assist in the processing of personnel commendations, both internally prepared and those received from citizens; develop specifications for uniforms and other equipment and determine that the equipment used by members of the Department complies with specifications; requisition, inventory, maintain and issue safety equipment; develop and supervise effective health and safety programs including the investigation preparation of proper reports of injuries to personnel received in the line of duty, and preparing reports to contractor administering Worker's Compensation Insurance, City Personnel Department and City Risk Manager; process all correspondence of persons and recruit and process applicants for the Police Aide positions in cooperation with City Personnel Department; develop and direct a training program, make duty assignments, maintain individual school and work records, and evaluate, counsel and direct the development of the Aides in their career objectives; to assist in compiling Department strength and assignment reports on a monthly basis from data received from other units; to assist the Administrative Division Captain and other Division/Department personnel as assigned.

Underwater Search and Recovery Team (US & R)

Administered by the Personnel & Training staff who are responsible to the Administrative Division Captain.

Function: To perform underwater searches in the Aquatic Park lagoon and in San Francisco Bay waters within Berkeley City limits to locate vehicles, weapons, human remains, or other items of investigative interest or evidentiary value. Team members are also available to assist outside agencies with water searches when requested under Mutual Aid. Under certain circumstances, the Team may assist in actual rescue attempts at the scene of boating accidents or similar incidents. The US & R is comprised of full-time members of both the Police and Fire Departments. All Team members must be certified Self-Contained Underwater Breathing Apparatus (SCUBA) divers and must obtain additional training and certification in the "Search and Recovery" specialty prior to actual deployment.

PR 407 PATROL DIVISION

Administered by a Captain who is directly responsible to the Deputy Chief of Police. Assistance to the Captain is provided by the Patrol Lieutenants and the Special Enforcement Bureau Lieutenant.

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a. <u>Barricaded Subject/Hostage Negotiation Team (BSHNT)</u>

Administered by designated employees who are directly responsible to the Captain of the Patrol Division.

Function: The primary purpose of the BSHNT is to handle barricaded subject situations, with or without hostages using specially trained employees. It is also used for protection of individuals and the service of high-risk felony warrants.

b. Community Services Bureau

Administered by a Sergeant who is directly responsible to a designated Patrol Lieutenant.

Function: To develop, direct, and maintain a broad based crime prevention program sensitive to the overall prevention needs of the community; meet with concerned citizen groups, neighborhood associations, and merchant groups to assist in the development of crime prevention programs; coordinate crime prevention efforts within the Berkeley Police Department, other City Departments, police departments, governmental agencies and community organizations which are engaged in related programs; maintain a community relations program by meeting with various community groups, in both formal and informal settings, and respond to their needs; respond to requests for officers to speak before community groups, organizations, and schools as well as schedule the appearances; utilize available crime analyst data within the Department as an information source to address specific locations by crime type, and to assist in the application of specific programs dealing with both Department and community needs; work closely with the Partnership Against Crime coordinator to better provide services to members of the community and organized business and residential neighborhoods; manage the "Are You OK" program; administer the Police Activities League program; coordinate and supervise the activities of the Berkeley Police Explorer Scout Post and the volunteer program (Transferred to Patrol Division 6/21/92)

Crowd Management Team (CMT)

Administered by a designated Lieutenant(s) who is directly responsible to the Captain of the Patrol Division.

Function: The primary purpose of the CMT is to serve as first and/or primary responders to those designated situations warranting crowd management (i.e., unusual occurrences, civil

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disturbances, etc.).

Field Training Officer Program (FTO)

Administered by a Sergeant(s) who is directly responsible to the designated FTO Lieutenant assigned to Patrol.

Function: The purpose of the FTO program is to train entry level and lateral officers to operate within Department guidelines, policies and procedures.

e. Foot Patrol

Supervision of a functional nature is provided by a Sergeant assigned to a day shift, who is directly responsible to the day watch Lieutenant.

Function: To provide visible foot and/or bicycle patrol in business districts, high crime areas and as otherwise directed; discourage those types of crimes generally associated with congested pedestrian conditions; assist at crowd control scenes; and perform other specialized police functions in times of emergency need.

f. Patrol Teams

Administered by Lieutenants who are directly responsible to the Captain of the Patrol Division.

Function: To provide 24-hour uniformed patrol coverage to all areas of the City with each Patrol Team working 10 hour shifts; receive, process and investigate complaints by citizens; observe and investigate circumstances which require attention; prevent crime; preserve the peace; arrest offenders; protect life and property; provide traffic enforcement; administer the Departmental motor pool and portable radios, and issue and maintain special equipment; attend Neighborhood Watch and other community meetings as directed; control public gatherings; provide traffic direction and control; perform miscellaneous services relative to public health and safety; prepare reports and testify in court.

g. Police Reserves

Administered by a Sergeant who is directly responsible to the day shift Lieutenant.

Function: To recruit, train, equip and supervise a volunteer police reserve; assist regular police personnel when the need for police services exceeds that available from the normal complement of the

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Patrol Division; maintain adequate personnel and equipment records; assign police reserve officers to provide regular support activity in the field; coordinate, plan, and staff special events; provide supervisory personnel from within the Reserve ranks; perform other specialized police functions in times of emergency need.

Special Enforcement Unit

Administered by a Lieutenant who is directly responsible to the Captain of the Patrol Division.

Function of Administrative Narcotics Unit: Responsible for gathering, analyzing, and disseminating information regarding narcotics-related criminal activity; acting as a liaison with the court and District Attorney; maintaining records of SEU cases charged/not charged and providing feedback to handling officers about those cases; developing an alpha file of local drug offenders and providing that information to DTF and SIB personnel; identifying, tracking, and prosecuting those involved in organized narcotic-related crime; providing drug abatement training for Patrol officers; coordinating asset forfeitures with State and Federal agencies.

Function of Drug Task Force (DTF): To provide drug enforcement directed against street level dealers; take assertive action against street drug dealers; implement "buy/bust" operations using undercover buyers; respond to "hot spot" complaints when available; monitor police channel 1 for current activities and specialized assignments when required; operate jointly with other agencies to suppress drug dealing; respond tactically to other crime problems as assigned.

Function of Special Investigations Bureau (SIB): To prevent drug trafficking, prostitution, illegal sale or use of narcotics and alcoholic beverages, and gambling; prevent other forms of commercialized vice; give particular attention to places where commercialized vice may be conducted and take every legal means to arrest those persons who may be engaged in such commerce; inspect and enforce regulations concerning the operation of on and off sale alcoholic beverage establishments; investigate applicants for adult dance permits, skating rink permits, entertainment permits, and inspect such locations; and to work closely with other City departments, law enforcement agencies, and other agencies on matters of mutual concern.

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i. Telephone Response Team (TRT)

Functional supervision is provided by Sergeants of a day or evening Patrol Team, depending on hours of assignment of TRT officers.

Function: To handle those calls for service which do not require the presence/assignment of an officer at the scene. The officers also provide assistance to citizens at the Front Counter at the Hall of Justice and to the Jailer, when assigned. Officers may occasionally be assigned to work in a mobile sub-station.

PR 408 SUPPORT SERVICES DIVISION

Administered by a Captain who is directly responsible to the Chief of Police.

a. Detective Bureau

Administered by a Captain who is directly responsible to the Chief of Police.

Function: To handle follow-up investigations of all reported crime involving adults and juveniles (with the exception of crimes involving auto burglary, thefts from autos and traffic-related matters); coordinate pawn shop and secondhand store transactions; investigate applications for used car dealers and wrecking permits; assist in felony and misdemeanor investigations by other jurisdictions; maintain investigative liaison with other law enforcement agencies; investigate crimes involving child abuse (physical and sexual) and child neglect; develop police programs dealing with juvenile control, delinquency prevention and drug awareness education; dispose of all cases involving juveniles as prescribed in Departmental Orders; maintain cooperative relationships with other agencies concerned with juvenile matters; provide individual treatment in the disposition of juvenile offenders; develop crime analysis information to assist in effective Patrol Division operations and to better inform the community of crime matters, and coordinate media requests.

b. <u>Service Bureau</u>

Administered by a Lieutenant who is directly responsible to the Captain of the Support Services Division.

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1. Identification Unit

Administered by an Identification Expert who is responsible to the Lieutenant of the Service Bureau.

Function: To provide identification services, including fingerprinting, photography and the maintenance of fingerprint identification and photograph files; examine crime scenes for identification evidence; conduct latent finger prints and handwriting comparison examinations; provide other technical services as appropriate.

2. <u>Information Management</u>

Administered by the Service Bureau Lieutenant who is directly responsible to the Captain of the Support Services Division.

Function: Development, implementation and maintenance of all computer related information management systems applicable throughout the Department.

3. Jail Operations

Administered by the Service Bureau Lieutenant and the Jail Operations Sergeant, who are directly responsible to the Captain of the Support Services Division.

Function: To insure the safe and efficient operation of the City Jail; provide for the short term detention of persons pending arraignment in court; insure that there is adequate staffing to provide for the physical needs and safety of all inmates; and provide for the safekeeping of prisoners' property during their detention in the City Jail.

Property Unit

Administered by a Supervisor who is directly responsible to the Lieutenant of the Service Bureau.

Function: To safeguard, inventory and process property and evidence related to investigations conducted by Department personnel; maintenance and monitoring of supplies for the police facility.

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5. Public Safety Communications Center

Administered by a Lead Sergeant who is directly responsible to the Lieutenant of the Service Bureau.

Function: To maintain the Public Safety Department's computer aided dispatch (CAD), radio and telephone communications systems; receive all incoming calls for emergency and routine Public Safety services; dispatch and assign Public Safety units; maintain radio discipline and control; provide information to the public; prepare the police CAD Daily Bulletin; and maintain related Public Safety files.

6. Records Unit

Managed by a Supervisor who reports directly to the Service Bureau Lieutenant.

Function: To maintain report and record files of the Department: furnish information and answer inquiries as outlined in Departmental Orders; handle Departmental correspondence not otherwise assigned by order or practice; process applications and issue permits; issue reports and provide information from these data as the Department may require: receive bail or arrange court appearances during the hours the Municipal Court Office is closed; maintain liaison with units of other City departments in securing and maintaining adequate communications and services needed in police operations and quarters; inventory and have custody of all property in the possession of or received by the Department, except evidence in the custody of the Detective Bureau; supervise the maintenance and use of police buildings; assist other Divisions in emergencies as necessary.

Report Review

Administered by a Supervising OAII who reports directly to the Service Bureau Lieutenant.

Function: Report Review is responsible for ensuring that police reports are transcribed and processed in a timely manner, meeting quality control guidelines, coding properly for entry into the Records Management System, distributed appropriately, and report liaison for the District Attorney's office.

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8. Warrant Detail

Administered by a Sergeant who is directly responsible to the Lieutenant of the Service Bureau.

Function: To serve all felony and misdemeanor warrants; serve certain criminal subpoenas on persons living outside the City.

PR 409 TRAFFIC DIVISION (established 7/1/90)

Administered by a Captain who is directly responsible to the Deputy Chief of Police.

a. <u>Traffic Bureau</u>

Administered by a Sergeant who is directly responsible to the Captain of the Traffic Division.

Function: To enforce traffic regulations; investigate traffic hazards and initiate remedial measures; prepare and maintain charts and summarize for use by Patrol and Traffic Divisions in maintaining selective enforcement programs; cooperate with public schools, other agencies and organizations to provide traffic safety education and information; prepare reports for the Chief of Police, City Manager, City Council, or others as directed; cooperate with City Traffic Engineer in developing engineering plans for the solution of traffic problems; initiate and assist in the preparation and review of traffic control legislation; oversee the police tow contract with private contractors and conduct post storage tow hearings; conduct the report review process on all collision reports; administer the tow program for the identification, locate and tow vehicles with accumulated parking citations; enforce California Vehicle Code sections relating to commercial vehicles; administer the Traffic Division motor pool, and issue and maintain special equipment. In conjunction with the Berkeley School District, train and supervise the Berkeley Junior Traffic Police and Adult Crossing Guards, and perform other duties as appropriate.

b. Parking Bureau

Administered by a Lieutenant who is directly responsible to the Captain of the Traffic Division.

Function: To enforce local parking regulations; oversee operation of parking garages; maintain and regulate parking in off street lots; enforces preferential parking regulations; make routine collections from meters; keeps records and account for all parking revenues;

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prepares related reports and correspondence for the Chief of Police, and maintains fleet and special equipment.

DATE ISSUED: January 24, 2013 GENERAL ORDER: C-66

SUBJECT: CRISIS INTERVENTION TEAM

<u>PURPOSE</u>

1 - The purpose of this General Order is to set forth departmental policy and procedures for the Crisis Intervention Team.

POLICY

- 2 To maximize safety for officers, mental health consumers and the public, it is the policy of the Berkeley Police Department to utilize, whenever possible, Crisis Intervention Team Officers for specified mental health crises.
- The Department's Crisis Intervention Team (CIT) is composed of specially trained officers whose function is to respond to incidents which involve a mental health crisis, where the officer's specialized skills may be used to resolve such an incident and to provide further assistance, beyond the actual call, for the individual involved.
- 4 The CIT Program has four primary objectives:
 - a) To attempt to de-escalate crisis situations.
 - b) To attempt to reduce the necessity for the use of force.
 - c) To attempt to reduce recidivism among mentally ill criminal offenders.
 - d) In collaboration with the community mental health system, consumer advocacy groups and the courts, to continuously work toward meeting these goals.

DEFINITIONS

- 5 <u>Crisis Intervention Team (CIT):</u> A specialized team operating within the Operations Division designated to respond to calls involving persons experiencing a mental health crisis.
- 6 <u>Crisis Intervention Team Member:</u> A member of the department who has completed 38 hours of POST certified CIT training (i.e., crisis de-escalation, signs and symptoms of mental illness, local resources for persons in a mental health crisis) and achieved CIT certification. Participation as a team member is voluntary, and team members have received specialized and specific training in order to be a resource to other officers.
- 7 <u>CIT Council:</u> A community collaborative comprised of law enforcement personnel, court officials and mental health advocates, responsible for

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continuously providing feedback on and improving/sustaining the Crisis Intervention Team. The Council also reviews individual cases and formulates recommendations.

- 8 <u>Mental Health Consumer:</u> A description commonly used by the mental health community when referring to an individual diagnosed with a mental illness or who is involved in a mental health crisis and utilizes mental health services.
- 9 <u>Crisis Intervention Team Coordinator:</u> A CIT trained Sergeant or Officer responsible for the development and maintenance of the CIT program.

PROCEDURES

General

10 - Whenever possible, CIT officers shall respond to specified calls for service involving individuals experiencing mental health crises. The use of CIT trained personnel is not limited to situations or calls involving the mentally ill, but extends to any circumstance wherein an individual is in need of crisis intervention due to a psychological/emotional crisis and/or when the individual is a danger to himself/herself, others or is gravely disabled.

CIT Officer Selection

11 - The position of CIT Officer is an ancillary duty assignment. Officers interested in becoming a member of the Berkeley Police Department CIT will complete a standard *Special Assignment Application Form.*

CIT Officer Identification

12 - CIT Officers may be identified by a "CIT" lapel pin on their uniforms, affixed in silver letters (gold for CIT trained commanders), affixed over the name plate on the right shirt pocket. The pin acts as an identifier to other officers, mental health consumers/family members and members of the general public that the officer has completed CIT training.

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Automatic Dispatch of CIT Personnel

13 - The Communication Center shall automatically dispatch the closest available CIT Officer(s) to the following incidents:

Calls involving actively suicidal subjects.
Calls normally dispatched as "violent 5150."
Incidents involving suspected mentally ill subjects with a weapon.
Hostage situations or barricaded subjects, until relieved or otherwise directed by the Barricaded Subject/Hostage Negotiation Team (BSHNT).

14 - The Communication Center shall advise if there are no available CIT Officers to respond.

Dispatch/Patrol Officer Unit Requests

- 15 In situations other than those specified under the guidelines established for automatic dispatch protocol, call takers, dispatchers and patrol officers can prompt, and/or request the response of CIT personnel. Situations may include:
 - a) Calls for service when it becomes known that a subject may benefit from CIT intervention.
 - b) A family disturbance call when it is determined that an individual suffers from a mental illness.
 - c) On-scene patrol officers who determine a need and requests CIT personnel to respond.

Berkeley Mental Health Mobile Crisis Team (MCT) Coordination

The MCT is a mobile emergency mental health service staffed by licensed mental health professionals and interns. The MCT offers crisis intervention, counseling follow-up and consultation services work collaboratively with police personnel, including CIT officers, acting as professional adjuncts. MCT clinicians may be used by CIT officers as consultants by assisting with crisis intervention. The MCT may also assist by helping to generate appropriate referrals and disposition recommendations for CIT officers.

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Barricaded Subject Hostage Negotiation (BSHNT) Coordination

17- If available, on duty CIT personnel shall respond to any incident involving a barricaded subject or hostage taker. If there are no BSHNT Tactical or Negotiator Element personnel on scene, the CIT officer may act as the primary negotiator until relieved by BSHNT personnel.

CIT Personnel: On-Scene Responsibilities

- 18- On-scene CIT personnel are responsible for the following:
 - a) Determining if the call for service warrants a CIT response.
 - b) W&I 5150 evaluations.
 - c) In the event an Emergency Psychiatric Detention is warranted, the CIT Officer shall prepare the required documentation and make any appropriate referrals.
 - d) If also functioning as the primary patrol unit, the CIT Officer shall complete the appropriate offense report and recover any of the property or evidence for safe keeping, if applicable.

DATE ISSUED: May 4, 2009 GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.
 - (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.
- 3 In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.
 - (a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.
 - (b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

- **4** <u>Lethal Force</u>: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 5 <u>Less-Than-Lethal Force</u>: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.

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(a) Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

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- 6 Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.
- 7 Officer (or) Police Officer: Any sworn peace officer.
- 8 <u>Authorized Employee</u>: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 9 <u>Employee</u>: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

10 - Deploy:

- (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
- (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.

11 - Use:

- (a) <u>With respect to less-than-lethal munitions</u>, to discharge a less-than-lethal munition.
- (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- **12** Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

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- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use Of Vehicles

- 13 Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- **14** Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
- 15 Except during authorized training programs, less-than-lethal **force** shall be deployed only at the direction of a sergeant or command officer, **or the Incident Commander in a crowd situation**.

^{*}Highlighted text is new.

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16 - Less-than-lethal **force** shall only be used in the following situations, and, where feasible, **after** some warning has been given:

- (a) When an act of violence is occurring, or is about to occur;
- (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
- (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
- (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.
- 17 When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).
 - (a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.
 - (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal **force** deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.
- 18 In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).
 - (a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

Use of Non-Lethal Force

- 19 When lethal force and less-than-lethal **force** are not authorized, officers and authorized employees may use reasonable **approved** non-lethal force techniques and weapons in the following circumstances:
 - (a) To protect themselves or another person from physical injury;
 - (b) To restrain or subdue a resistant individual; or

*Highlighted text is new.

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(c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

- 20 The following uses of force are prohibited:
 - (a) Carotid Restraint Hold: Council Resolution No. 52,605 N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
 - (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."
 - (c) <u>Deployment of less-than-lethal munitions from a shotgun is</u> prohibited.

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

- 22 When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
 - (a) If the witness employee is a <u>sworn officer</u>, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

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(b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

Use of Force / Reporting Requirements

- 23 Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:
 - (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
 - (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained, except in those situations deemed "Unusual Occurrences" as set forth in General Order U-4 and the Event Management Manual, in which case, the After Action Report will serve as the police report. (See also General Order U-4)
- **24** The officer or employee must also complete a police or incident report in any of the above four situations.
- 25 Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form)

Use of Force / Supervisor Responsibilities

- **26** A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:
 - (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

^{*}Highlighted text is new.

DATE ISSUED: May 4, 2009 GENERAL ORDER U-2

(d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

- **27** A supervisor shall complete a Use of Force Report in any of the above four situations.
 - (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
 - (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)
- 28 The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

Use of Force / Administrative Review

- 29 The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.
 - (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.
- 30 The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.
- 31 Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.
- 32 All Use Of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.
- 33 Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDUCRES / DEATHS AND SERIOUS BODILY INJURY

34 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

^{*}Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

(a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."

(b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings And Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: Tennessee v. Garner (1986) 471 U.S. 1

Graham v. Connor (1989) 490 U.S. 386

Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272

California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843

General Orders A-17, C-16, C-64, F-2, P-12, P-26, R-3 and U-4

Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332

Training and Information Bulletin 216

Lethal and Non-Lethal Force Manual

Uniform and Equipment Manual

City of Berkeley Council Resolution No. 52.605 – N.S. (2/14/85).

"Prohibiting use of 'chokehold' for law enforcement

purposes in the City of Berkeley"

National Tactical Officers Association, General Policy Statement for Less-Than-Lethal Impact Projectiles (11/22/2002)

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

EXEMPLAR

BERKELEY POLICE DEPARTMENT USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-then-lethal munitions are used on a person; or (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.

Date:								
To:	Chief of Police via Chain of Command							
From:								
Subject:	USE OF FORC	E REVIEW						
Refer to Cas	e Number(s): _							
Date / Time	of Incident:							
Location of I	ncident:							
Nature of Inc	cident:	1 		a-				
Officer(s)/En	nployee(s) Involv	/ed:						
Type of Forc	e used:	Physical Firearm		Baton Less-than-leth			O.C. Other	
Was Officer	or Police Employ	yee injured?		Yes] N	lo		
If yes, nature	e of injuries:							
Medical trea	tment required:	BFD Response	- 🗆	Yes [] N	lo		
								*

^{*}Highlighted text is new.

DATE ISSUED: May 4, 2009	GENERAL ORDER U-2
Was a citizen(s) injured during this incident? ☐ Yes	
If "yes," nature of injuries:	
Medical treatment required: BFD Response - □ Yes	
Investigator(s) and Identification Technician who responde	
Were photographs taken?	□ No
Summary of actions of Officer(s) involved:	
Supervisor's Comments:	
Division Commander Recommendation:	
Findings: □ \	Vithin Policy
	Referred for Administrative Action/Investigation
(Date)	

^{*}Highlighted text is new.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: April 15, 2008

NUMBER: 247

SUBJECT: "THE WRAP" RESTRAINT

<u>PURPOSE</u>

Defensive tactics techniques are employed by law enforcement to control, and if necessary immobilize, violent or potentially combative people who have been taken into custody. This training bulletin is intended to familiarize Department personnel with "The WRAP" physical restraint device and guidelines for its use.

DEVICE DESCRIPTION

The WRAP, manufactured by Safe Restraints, Inc., is designed as a temporary restraining device. Comprised of a Velcro-strapped leg panel, torso harness, ankle strap, and backside handcuff carabiner, the device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

USE OF THE WRAP

Consistent with policy detailed in General Order T-2, The WRAP may be used:

- To restrain a combative person.
- To prevent potential violent/combative behavior.
- To inhibit a violent subject's efforts to injure themselves.
- To prevent a violent subject from causing property damage.
- To facilitate safe physical transportation of violent/combative subjects.
- When conventional methods of restraint are not effective.

As with any restraint device, do not assume The WRAP is escape-proof. Once applied, THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.

A person restrained by The WRAP can be placed on their side or in a sitting position. This will increase the person's oxygen recovery rate and reduce the potential for respiratory fatigue or positional asphyxia.

DEVICE APPLICATION

Only qualified personnel who have received training in the use of The WRAP should use this restraining device. Throughout the application of the WRAP, the subject must

^{*}Entire text is revised.

be physically controlled. Notwithstanding the subject's restraint, officers' should remain aware of the person's ability to bite, spit or use head strikes against them.

To safely apply The WRAP, it is recommended that <u>no less than three (3) officers</u> are involved in the following procedure:

- After controlling and handcuffing the subject, restrain him/her into a prone (face down) position.
- Cross the subject's ankles and secure them with The WRAP's ankle strap.
 Ensure the strap's black Velcro side is facing outward and the hand-carry loop is facing toward the front of the subject's body.
- Slide The WRAP's restraint panel under the subject's legs and place the label marked "Knees Here" under the his/her knees.
- 4) Tightly secure the panel's three Velcro straps, starting with the strap closest to the subject's feet.
- 5) Place the handcuff chain into the torso harness' carabiner and engage the carabiner's lock mechanism.
- 6) Maintain control of the subject and reorient him/her into a seated position.
- Place the harness over the subject's head and direct its restraint straps under the person's arms to the front of his/her torso. Buckle the restraint straps to the harness and pull both straps snug (do not over-tighten.)
- 8) Attach the torso harness' front tether strap to the carabiner (located at the bottom of the device's restraint panel, near the ankles) and engage the carabiner's lock mechanism.
- 9) Pull the tether strap until the subject is held by the harness system in an upright position (do not over tighten.)

TRANSPORTATION

Movement of the subject can be accomplished in three ways, depending on the level of their cooperation. The subject can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.

To safely carry a person restrained in The WRAP:

No less than three (3) officers should be employed to lift and carry a person restrained in The WRAP. Two officers hold and lift the subject from under each of his/her arms. The third officer holds and lifts via the ankle strap's carry loop. Additional officers and a "log lift" carrying technique may be used depending on the subject's size and/or level of continued violence.

IMPORTANT: Proper lifting technique should be used to prevent unnecessary injury.

To facilitate movement by shuffle walk:

If the subject has calmed and is amenable, an option to carrying is allowing the person to shuffle walk. Loosen the lower strap of the restraint panel (nearest the ankles) just enough to allow some leg movement below the subject's knees. Then, loosen the torso harness' tether strap to let the subject stand upright. Controlled and assisted by no less than two (2) officers, allow the subject to shuffle walk to the desired location.

Vehicle Transportation:

Use a transportation vehicle appropriate for the manner in which a person is restrained. If available and practical, use the vehicle's seat belt to limit the person's movement and reduce the risk of his/her injury. For additional relevant information and policy on prisoner transportation, refer to General Order T-2.

Prior to vehicle transportation, re-check all belts (on the device and vehicle safety restraints, if used) to ensure that they are securely fastened. Whenever possible, two officers should accomplish the transportation: one driver and one prisoner observer. Maintaining observation of the restrained prisoner serves to ensure The WRAP remains secure and increases the ability to determine if the subject exhibits any medical problem.

DEVICE REMOVAL

To remove The WRAP restraint, reverse the application procedure. Based on the prisoner's combativeness or level of aggression, officers should employ appropriate subject control techniques and tactics when removing restraint devices. Having a plan of action that every officer understands, working as a team, and taking sufficient time to implement the plan will enhance employee safety during this dangerous period of the subject's custody.

SAFETY PRECAUTIONS

Officers who use The WRAP should always be mindful of the following safety issues:

- THE SUBJECT SHOULD NOT BE LEFT UNATTENDED.
- The WRAP is a temporary restraint device and is not escape-proof.
- The WRAP should only be used by personnel trained in its function and application.
- All device restraint straps should be checked frequently for tightness, and adjusted, as necessary, until The WRAP is removed.
- The torso harness restraint straps should never be tightened to the point they interfere with the subject's ability to breathe.
- As soon as possible after being restrained in The WRAP, a prisoner should be placed in an upright sitting position or on their side to allow for respiratory

recovery; relieve abdominal pressure as soon as practical to mitigate the potential for positional asphyxia.

 If a restrained subject complains of, or exhibits any of the following physiological conditions, immediate medical attention may be required (refer to General Order A-17):

Respiratory distress
Sudden quiet or inactivity
Chest pains, shooting pains down the arm
Change in facial color
Elevated temperature ("I'm burning up!")
Vomiting

CARE, STORAGE AND MAINTENANCE

It is important The WRAP is maintained and stored in a condition ready for immediate use. When properly prepared, The WRAP can be quickly deployed and efficiently applied without adding confusion to an already chaotic situation.

To properly prepare The WRAP for storage in the carrying bag:

- 1) Detach the torso harness, lay the leg panel on a flat surface with the restraint strap side up, and open each strap.
- 2) Fold each restraint strap onto itself so that the fold (point of bend) of the strap extends an inch or two beyond the edge of the leg panel.
- 3) Ensure the panel's carabiner is unlocked and ready for use.
- 4) Keep the closed strap inside the panel as you roll the panel toward the buckle edge. Secure the rolled panel with the ankle strap, its carry loop exposed, and place into the carrying bag.
- 5) Fully extend the torso harness restraint straps and tether, leaving enough strap available to grab onto (approx. 2"-3".)
- 6) Attach the side strap buckles to their harness-mounted counterpart, roll up the harness, and place it in the carry bag's interior side compartment.

The WRAP should be inspected after each use, or minimally at a regular interval, for signs of wear or damage. If any damage is discovered, forward The Wrap to the Patrol Division Fleet Manager for repair or replacement. If cleaning is necessary, warm water and a mild detergent appropriate for use on vinyl polyester and nylon material should be used. Thoroughly rinse all components and allow them to air dry completely before returning the device to its carry bag.

Should the equipment become contaminated by blood or other bodily fluid that could transmit a blood-borne pathogen (BBP), don appropriate personal protective equipment (e.g., nitrile gloves) and place the equipment into a paper bag (double bag, if

necessary.) If decontamination cannot be accomplished prior to the end of the involved officer's duty shift, the bag containing equipment must be labeled as a bio-hazard and forwarded to the Patrol Division Fleet Manager for follow-up action.

To clean soiled equipment, use an approved disinfectant/decontaminant cleaner <u>or</u> well-diluted bleach solution (ten (10) parts water, one (1) part bleach). Again, any person handling/cleaning contaminated equipment must wear appropriate PPE. Soiled disposable towels and any equipment so contaminated that cleaning is impractical or not possible should be discarded in accordance with bio-hazard waste management procedures prescribed in the City's BBP Program/Exposure Control Plan.

The WRAP leg restraint panel is made of Texinene, a PVC-coated woven polyester fabric, and its straps are Nylon banding. According to TMI, LLC, a polyester fabric manufacturer, and available Material Safety Data Sheets for both materials, neither is reactive to, or harmed by, chlorine bleach. <u>AVOID THE USE OF HYDROGEN PEROXIDE</u>, as Texinene may be adversely effected due to chemical reaction.

CONCLUSION

The WRAP is a physical restraint device that has time and again proven its value to this department. Like any tool of our trade, training, proper use, and equipment maintenance are essential components of a successful safety system. By following the procedures and recommendations presented in this Training and Information Bulletin, this system will continue to promote both officer and prisoner safety for many years to come.

Douglas N. Hambleton

Chief of Police

References: General Orders A-17, H-6, T-2 and V-4

City of Berkeley Blood-Borne Pathogens Program, Exposure Control Plan (November 2007)

DATE ISSUED: July 12, 2010 GENERAL ORDER H-6

SUBJECT: HANDCUFFING AND TEMPORARY RESTRAINT SYSTEMS

PURPOSE

1 - The purpose of this General Order is to provide guidelines on the use of handcuffs and other temporary restraint systems.

POLICY

2 - It shall be the policy of this Department to handcuff **or otherwise effectively restrain** all arrested persons (excluding infraction citations where no transport is necessary), **or detainees as reasonably necessary**, to protect the lives and safety of officers, the public, and the person arrested.

PROCEDURES

General

- 3 Officers shall **restrain an arrested or detained** person's hands behind the person's back, except as **authorized** in **paragraph 6 of this Order**.
- 4 Temporary restraint systems shall be employed in a manner consistent with Department-approved training.
 - (a) When employed, hand or ankle cuff systems shall be double locked, if so designed.
 - (b) Officers shall not employ temporary restraint systems in a manner that results in extraordinary discomfort or would facilitate the person's opportunity to escape.
- 5 Officers shall ensure that the **restrained** person is supervised at all times.
- 6 If a person's hands cannot be restrained behind his/her back because of large body mass, physical disability, injury, or obvious state of pregnancy, without causing unnecessary pain or aggravation of the injury or disability, officers will attempt to accommodate the person's condition by using alternative means of restraint.
 - (a) Alternative means of restraint include, but are not limited to:
 - (1) Handcuffing the person with his/her hands in front of his/her body.
 - (i) If a person is handcuffed in front, the officer should use supplemental restraining devices around the person's waist to prevent him/her from striking or choking an officer or others.

DATE ISSUED: July 12, 2010

GENERAL ORDER H-6

- (2) Handcuffing the person behind the back with **multiple** sets of **linked** handcuffs.
- (3) Use of a full or partial body restraint systems (e.g., the WRAP, ankle restraint systems, ambulance gurney with five-point straps, etc.)
 - (i) While initial use of handcuffs behind the back and hands-on control techniques may be necessary for officer safety, if circumstances dictate greater care should be taken during transportation, supplemental restraint devices and/or alternative transportation options should be considered.
- (b) In deciding whether **restraint of** a person's **hands** behind **his/her** back will aggravate a physical disability, injury, or obvious state of pregnancy, the officer should consider the totality of circumstances, including:
 - (1) Observable signs of disability (e.g., partial paralysis, convulsive seizure activity, medic alert ID, disabled person placard, etc.);
 - (2) Statements of the person or others regarding the person's condition; and,
 - (3) Indications the person is at significant risk of positional asphyxiation (ref. Training Bulletin #234).

Juveniles

- 7 Juveniles under 12 years of age shall not be handcuffed unless he/she:
 - (a) Resists being taken into custody;
 - (b) Threatens the officer, himself/herself, or others with harm;
 - (c) Through words or actions causes the officer to believe he/she may attempt to escape from custody; or,
 - (d) The detention is associated with a violent incident.
- **8 When evaluating** the use of **temporary restraint systems**, due consideration shall be given to the age of the juvenile and to the emotional impact which the use of handcuffs may have.

Detentions

9 - Handcuffing of individuals who are not under arrest, but are being detained, should be done only if reasonably necessary.

^{*}Highlighted text is new.

DATE ISSUED: July 12, 2010

GENERAL ORDER H-6

10 - The use of handcuffs during a detention, and reason for their application, shall be documented in a police report.

References: General Orders T-2 and J-18

Training and Information Bulletins #234 and 247

Special Order #03-26, "Change in Procedures – Juvenile Handcuffing

and Juvenile Miranda Rights" (9/11/2003)



TRAINING AND INFORMATION BULLETIN

DATE:

AUGUST 23, 1995

NUMBER: 234

SUBJECT:

SUDDEN IN-CUSTODY DEATHS

INTRODUCTION:

Sudden in-custody death is not a new phenomenon - it can occur at any time and for a variety of reasons. Any law enforcement agency may experience a sudden in-custody death. While rare, such deaths appear to be associated with the following syndromes:

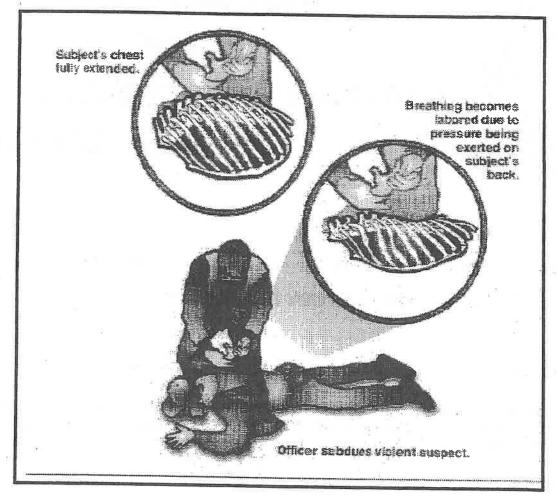
Positional Asphyxia
Cocaine Abuse and Toxicity
Cocaine-Induced Excited Delirium
Neuroleptic Malignant Syndrome.

During the autopsies performed after in-custody sudden deaths, no evidence of these four syndromes is discovered other than the presence of cocaine and evidence of heart attack. Often, the only unusual signs noted by the Pathologist may be the bruises found on the body of the in-custody, which resulted from the struggle during the arrest.

It is important that all Berkeley Police Department personnel understand that preexisting risk factors, combined with the subject's body position when subdued or in transit, can compound the risk of a sudden death.

POSITIONAL ASPHYXIA:

"Positional Asphyxia occurs when body position interferes with respiration, resulting in asphyxia. Positional Asphyxia deaths tend to occur in a similar manner: Maximally restrained subjects, unless seated upright in police vehicles, may become quiet and inactive after several minutes of transport. Respiratory difficulty is exhibited, and subjects subsequently stop breathing." Positional Asphyxia may occur when restrained suspects are



placed in a prone position for a period of time 1, particularly stomach down.

A person lying on his/her stomach has trouble breathing when pressure is applied to the back. Often, this situation is compounded by a vicious cycle of suspect resistance and officer restraint:

- A suspect is restrained in a face-down position and breathing may be labored.
- Weight is applied to the subject's back the more weight means more severe chest compression.
- The individual experiences increased difficulty breathing.
- Due to oxygen deficiency, the person struggles more violently.



¹ IACP Executive Brief "Pepper Spray and In-Custody Deaths" Charles S. Petty M.D. John Granfield, Jaimi Onnen, March, 1994



- Due to oxygen deficiency, the person struggles more violently.
- The officer applies more compression to subdue the individual.²

Individuals that are obese and/or have large bellies are high risk candidates for sudden death due to positional asphyxia. ³

Placing restrained persons in a face-down prone position for long periods of time, should be avoided. Never leave a restrained person in a face down prone position without constantly monitoring his/her vital signs.

Berkeley Police Department patrol cars have been fitted with plastic rear seats which not only secure a prisoner during transportation, but also keep the prisoner in an upright position during transportation. When transporting a restrained prisoner who has been sprayed with OC, insure that the subject is secured so that the person remains seated in an upright position. Some restrained prisoners may suffer Positional Asphyxia if they are allowed to slouch over.

COCAINE ABUSE AND TOXICITY:

"Cocaine is an agent that stimulates both the cardiovascular and central nervous systems. Cocaine constricts blood vessels, elevates heart rate, raises blood pressure, and increases body temperature. Such effects have produced lethal anatomic catastrophes in individuals without underlying preexisting anatomic disease(s). It has been documented that cocaine use causes strokes and heart attacks. Of further concern is that there is no individual lethal dose. The risk of sudden death is increased 18 fold when cocaine is used with alcohol. Police should be aware of the potential lethality of cocaine use." ⁴

COCAINE-INDUCED EXCITED DELIRIUM:

Excited delirium is an acute mental disorder characterized by impaired thinking, disorientation, visual hallucinations and illusions. Behavior is consistent, purposeless and often violent. Cocaine-induced excited delirium fatalities tend to occur in stereotypic manner, with suspects exhibiting similar behaviors. Symptoms begin with the onset of acute paranoia, immediately followed by violent and often bizarre behavior. Such behaviors include displaying violence towards inanimate objects (particularly glass), running,

² Department of Justice, National Law Enforcement Technology Center, "Positional Asphyxia-Sudden Death" June 1995

³ "Spray Day" Ed Kowicki, Police Magazine, January 1995

⁴ IACP Executive Brief "Pepper Spray and In-Custody Deaths"

screaming and stripping off clothing. 5

Suspects exhibit great strength, and appear to have a significantly diminished sense of pain. Use of force used by police often has minimal effects. Sudden death occurs either during or immediately after the struggle. The mechanism of death is uncertain.

Police Officers should be aware of the potential for sudden unexpected death resulting from cocaine-induced excited delirium. Officers should be able to immediately recognize attendant symptoms including any one or combination of the following:

bizarre and/or aggressive behavior; shouting; paranoia; panic; violence towards others; unexpected physical strength; apparent ineffectiveness of OC spray; and sudden tranquility.

Officers who encounter subjects who exhibit these symptoms should be aware of this acute mental disorder. If OC spray is used while attempting to subdue an individual who exhibits these symptoms, the subject must be constantly monitored until the restrained subject receives medical attention by a physician.

Officers are encouraged to make use of the Berkeley Fire Department Para-Medics and ambulance to transport the restrained subject to a hospital. If the restrained subject is transported to a hospital in a police car, an officer shall sit with the restrained subject in order to closely monitor the subject's vital signs.

NEUROLEPTIC MALIGNANT SYNDROME (NMS):

Neuroleptic Malignant Syndrome (NMS) presents characteristics in a manner similar to Cocaine-Induced Excited Delirium. NMS usually occurs in psychiatric patients who are taking antipsychotic medication. Physical exhaustion, dehydration, and organic brain disease are additional predisposing factors.

The condition is poorly understood and may be related to a cardiac event due to psychological stress. The common term "scared to death" is literally true. ⁶

Officers who encounter individuals who may be suffering from Neuroleptic Malignant



⁵ IACP Executive Brief "Pepper Spray and In-Custody Deaths"

⁶ IACP Executive Brief "Pepper Spray and In-Custody Deaths"

Syndrome, who exhibit the same violent symptoms of Cocaine-Induced Excited Delirium, and who have been sprayed with OC shall transport the restrained subject to a hospital in either an ambulance or a patrol car. In any case, officers shall insure that the restrained subject's vital signs are constantly monitored.

CONCLUSION:

There has never been a case where the use of OC on a resisting subject was declared the cause of death in a sudden death incident. However, officers should be aware of two facts:

- Due to positional, cardiac, and psychotic conditions, sudden death incidents involving resisting subjects do occur. Officers should avoid placing subjects in positions which impair breathing and pay close attention to persons in custody who exhibit symptoms of Cocaine-Induced Excited Delirium and Neuroleptic Malignant Syndrome.
 - 2. Officers are reminded, "if two good 1/2 second OC sprays, delivered on target, do not stop the resisting subject, the OC is probably not going to work." ⁷ Officers should not continue to spray the resisting subject, but use other appropriate means to handle the resisting subject.

D. E. BUTLER Chief of Police

⁷ Lee Sampson, Sales Representative, Defense Technology, Casper, Wyoming

DATE ISSUED: April 27, 2010 GENERAL ORDER W-4

SUBJECT: ARREST WARRANTS

PURPOSE

1 - The purpose of this General Order is to establish policy and procedures for the assignment, service, and administration of arrest warrants.

POLICY

- 2 Service of criminal processes associated with arrest warrants shall be executed only by sworn peace officers.
- 3 Officers shall follow statutory and case law guidelines, and local rules and regulations when executing criminal processes associated with arrest warrants.

PROCEDURES

General

- 4 Arrest warrant inquiries shall be made via computer-based, automated wanted persons databases (e.g., Arrest Warrant System (AWS), California Law Enforcement Telecommunications System (CLETS), National Criminal Information Center (NCIC), etc.).
 - (a) Arrest warrants entered into AWS as "active" shall be considered valid and available for service without further confirmation action, unless otherwise indicated on a particular AWS record.
 - (b) When an arrest warrant appears in AWS in a status other than "active", or is not in AWS, but appears as "active" in a wanted persons system other than AWS, the validity of that warrant shall be confirmed with the issuing agency prior to its service.
- 5 Communication Center personnel shall be responsible for the following activities related to arrest warrants:
 - (a) Respond to field requests for computer checks regarding outstanding arrest warrants.
 - (b) Facilitate status confirmation of outside agency arrest warrants.
 - (c) Request or communicate teletype abstracts regarding arrest warrants.
- 6 Officers involved in transportation of prisoners arrested pursuant to warrant shall adhere to procedures set forth in General Orders H-6 and T-2.
- 7 Officers who engage in the planned service of an arrest warrant shall adhere to operational planning and execution protocols described in General Order S-6.

DATE ISSUED: April 27, 2010

GENERAL ORDER W-4

- (a) A supervisor and appropriate number of officers shall be employed to ensure the safe and successful service of an arrest warrant.
- 8 Citation release of a person arrested pursuant to arrest warrant shall conform to procedures set forth in General Order C-10.

Arrest Warrant Administration

- 9 The Warrant/Court Liaison Detail shall be responsible for the service coordination of adult arrest warrants.
- 10 The Youth Services Detail shall be responsible for the service coordination of juvenile arrest warrants.
- Planned service of arrest warrants should be prioritized by type of warrant (Original, Bench, Traffic) and severity of offense (felony, misdemeanor, infraction).
 - (a) Notwithstanding standard considerations, service of arrest warrants involving potentially dangerous offenders should be given priority.
- 12 Arrest warrants issued by the Alameda County Superior Court, and assigned to the Berkeley Police Department shall be processed into AWS by the Service Bureau.
 - (a) Arrest warrants that do not include the following information will not be entered into AWS:
 - (1) Date and time received;
 - (2) Date of issuance by the Court;
 - (3) Nature of document (i.e., Penal Code offense);
 - (4) Source of document (i.e., Original or Bench warrant);
 - (5) Name of and identifying information for the defendant;
 - (6) Court docket/warrant number;
 - (7) Amount of bail; and,
 - (8) Whether or not endorsed for night service.
- 13 The Communication Center shall be responsible for warrant confirmation liaison with, and communication of teletype abstracts to, outside agencies serving local arrest warrants.

DATE ISSUED: April 27, 2010

GENERAL ORDER W-4

- 14 Jail staff shall be responsible for update of computer records (i.e., AWS, CLETS, etc.) regarding the service of arrest warrants and related custodial status of the subject person who is booked into the Jail facility.
- 15 Jail and Communication Center personnel shall forward all records that relate to the service of arrest warrants to the Warrant/Court Liaison Detail.
- 16 Warrants/Court Liaison Detail shall have administrative due diligence responsibility regarding service of arrest warrants assigned to, or requested of, this Department.
 - (a) When the subject of a local arrest warrant lives in a jurisdiction other than Berkeley, the Warrants/Court Liaison Detail may communicate the warrant information to and request service assistance from the involved outside agency.
 - (b) When notified of warrant service activity, Warrants/Court Liaison Detail shall update AWS or, if regarding an outside agency warrant, communicate the service activity to the responsible agency.
 - (c) As necessary, Warrants/Court Liaison Detail shall assist Youth Services Detail in managing administrative due diligence activity regarding service of juvenile arrest warrants.
- 17 Warrants/Court Liaison Detail shall send a courtesy notice regarding the issuance of an arrest warrant assigned for service by this Department to the address indicated on the warrant.
 - (a) As necessary, Warrants/Court Liaison Detail should research for a current or accurate address for the subject of an arrest warrant, and send a courtesy notice to that location.
- 18 "Custody Option Program" booking and release of eligible persons subject to arrest upon warrant shall be accomplished by the Warrant/Court Liaison Detail.

References: Penal Code §§813 – 817.5, 827.1, 840, 848, 1427, 1524, 1525 and 1530 General Orders C-10, H-6, S-6 and T-2

DATE ISSUED: April 7, 2010 GENERAL ORDER 1-16

SUBJECT: MENTALLY DISORDERED PERSONS

PURPOSE

1 - The purpose of this Order is to establish policy and procedure for the custody and/or transportation of mentally disordered persons to designated treatment facilities, and other related processes.

POLICY

- 2 Employees are expected to comply with applicable law and the procedures described in this Order.
- 3 Employees shall reasonably ensure all medical or mental health records or information obtained while providing services to mentally disordered persons remain confidential.
 - (a) Employees shall not make public nor reveal to unauthorized persons any information received about mentally disordered persons.
 - (b) Release of confidential information documented in a police report shall be handled as set forth in General Order R-23.

DEFINITIONS

- 4 <u>Deadly Weapon</u>: Any weapon, the possession or concealed carrying of which is prohibited by Penal Code §12020.
- 5 <u>Gravely Disabled</u>: A person so impaired by a mental disorder that he/she cannot provide for his/her basic needs for food, clothing, or shelter.
- 6 <u>"In Extremis" Person</u>: A person with a potential life-threatening illness or injury.
- 7 <u>Mentally Disordered Person</u>: A person who is a danger to him-/herself, others, or is gravely disabled as a result of a mental disorder.

PROCEDURES

Emergency Detention

- 8 A mentally disordered person may be taken into custody by a sworn peace officer and placed in a facility designated by the County and approved by the State Department of Mental Health for emergency evaluation and treatment (ref. Welfare and Institutions Code (WI) §5150).
- 9 Officers who take a mentally disordered person into custody pursuant to WI §5150 shall complete an Application for Emergency Psychiatric Detention form documenting the following information:

DATE ISSUED: April 7, 2010

GENERAL ORDER 1-16

- (a) The circumstances under which the person's condition was called to the attention of law enforcement;
- (b) The officer's observations and belief that the person, as a result of mental disorder, is a danger to others, to himself/herself, or is gravely disabled; and,
- (c) If the emergency commitment is associated with a criminal offense and arrest, the words "POLICE HOLD" and relevant code sections shall be written on the Application form.
 - (1) In the event the law enforcement hold is solely related to a parole violation, the words "PAROLE AGENT HOLD" shall be written on the Application form.
- (d) The officer's issuance of the Detainment Admonition (WI §5157(a)).
- 10 When an officer commits a mentally disordered person under the provisions of WI §5150, the Application For Emergency Psychiatric Detention form shall serve as the police report.
 - (a) Application forms prepared by officers shall be prepared and administered in accordance with established report writing procedures (ref. General Order R-31).
 - (b) If the emergency commitment is associated with a criminal offense and arrest, the Application form shall be incorporated into and bear the same report number as the criminal investigation report.
 - (c) Referral "green" copies of the completed Application for Emergency Psychiatric Detention form shall be given to ambulance personnel prior to transport.
 - (d) The officer shall ensure a copy of the Application form (i.e., the "white" cover page retained as the police report) is routed to the Berkeley Department of Health Services' Mental Health Division.

Voluntary Committal/Request for Psychiatric Care

11 - Employees shall facilitate the request of any person in Berkeley for emergency psychiatric care.

Tranportation Procedures

12 - A mentally disordered person who voluntarily requests transportation, or is subject to WI §5150 detention, for emergency psychiatric evaluation shall be transported to an appropriate care facility via ambulance.

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(a) When requesting an ambulance transport, officers shall advise the Communication Center if the mentally disordered person has a known or suspected injury or illness that might require prepsychiatric commitment medical clearance.

- (b) Communication Center personnel shall be responsible for requesting the appropriate ambulance service, based on **information** communicated by the requesting officer and requirements set forth in the service contract(s) maintained with Alameda County EMS governing non-medical WI §5150 transportation.
- 13 A mentally disordered person who is "in extremis" or otherwise requires medical clearance prior to delivery to a psychiatric care facility shall be transported to the appropriate "Receiving Hospital", as determined by ambulance personnel.
 - (a) Officers shall communicate knowledge of and observations regarding a mentally disordered person's physical status (i.e., known or suspected injury, illness or substance influence, history of same, etc.) to ambulance personnel to assist their assessment of whether or not a medical clearance is required.
- 14 Officers shall evaluate the mentally disordered person's potential for violence when **considering** transportation **logistics**.
 - (a) <u>Non-Violent Person</u>: **Officers will not be required to participate in the** transportation of a mentally disordered person to the appropriate medical or psychiatric treatment facility.
 - (b) <u>Violent Person, Threat of Violence or Escape/Crime-related "HOLDS"</u>:
 Officers shall participate in the transportation of a mentally disordered person who is violent, where there is a threat of violence or escape, or when the person is subject to a "POLICE HOLD" or "PAROLE AGENT HOLD".
 - (1) Participation in transportation may include following the ambulance in a separate vehicle, or, if requested by ambulance personnel or required for security, riding within the ambulance.
 - (i) The officer who participates in transportation by riding in the ambulance shall ensure his/her return to **Berkeley** is arranged prior to departure to the designated treatment facility.
 - (2) Patrol Division personnel shall be responsible for postcommitment transportation of a "POLICE HOLD" prisoner from the involved psychological services facility.

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15 - Prior to transportation, the officer taking a mentally disordered person into custody pursuant to WI §5150, or who facilitates the person's request for voluntary psychiatric evaluation, shall insure the person is searched for weapons or items that could present a safety hazard or security concern to ambulance personnel.

- (a) When police department personnel have physical custody of a prisoner who is/was subject to emergency psycological commitment and evaluation, custodial and prisoner transportation policies and protocols shall be followed (ref. General Orders J-1 and T-2).
- 16 When a person is taken into custody for psychiatric evaluation, precautions shall be taken to preserve and safeguard the property in his/her possession or in his/her control on the premises occupied by the person.
 - (a) Property may be left in the custody of a responsible relative (i.e., spouse, parent, adult child, and adult brother/sister, but not petitioner), guardian or conservator.
- 17 If a mentally disordered person is apprehended in either his/her home or vehicle, the responsible officer should make reasonable efforts to secure the home or vehicle, or convey its custody to a responsible relative, guardian, or conservator.
 - (a) If necessary, an officer may order the removal of a vehicle from the public right-of-way (ref. Vehicle Code §22651(g) and General Order V-2).
- 18 If a mentally disordered person is apprehended away from his/her home or vehicle, and advises that either is in danger if not secured or protected, the officer should make reasonable efforts to secure the property and notify a responsible relative, guardian, or conservator.
- 19 Custody of the personal property (not in person's immediate possession/control), vehicle, or home of a mentally disordered person may be conveyed to any responsible adult upon express consent of its owner.

Firearms/Deadly Weapons Procedure

- 20 When a mentally disordered person detained or apprehended for emergency psychiatric evaluation is found to have in his/her immediate possession or control, any firearm or deadly weapon, the officer <u>shall confiscate</u> and retain custody of said firearm or weapon (WI §8102(a)).
 - (a) Despite the directive of WI 8102(a), officers shall not enter a mentally disordered person's residence, or if in the residence at the time of detention/apprehension, search areas beyond the person's immediate control, solely to seize a firearm or deadly weapon without express consent or a search warrant.

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GENERAL ORDER 1-16

- (b) The officer who confiscates a firearm or deadly weapon from a mentally disordered person shall inform the person of the procedures for the return of the seized item (WI §8102(b)).
- (c) The officer who confiscates a firearm or deadly weapon pursuant to this Order shall forward a copy of the police report to the Detective Bureau unit responsible for weapons investigation.
- 21 Within 30 days of the release of a mentally disordered person from a psychiatric care facility, Detective Bureau personnel may initiate a petition in the Superior Court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to endanger the person or others (WI §8102(c)).
 - (a) Should retention of the firearm or deadly weapon be deemed in the best interest of public safety, petitioning Detective Bureau personnel shall ensure notice has been sent to the mentally disordered person advising him/her that he/she has 30 days to request a court hearing on the seizure of the weapon and that the failure to request a hearing will result in forfeiture of the weapon (WI §8102(e)).
 - (b) If the mentally disordered person does not respond to the Court within 30 days of notice, Detective Bureau personnel shall file a petition for Order of Default to authorize forfeiture of the firearm or deadly weapon.
- 22 Prior to the return of a firearm seized pursuant to this Order, pre-return requirements described in PC §12021.3 shall be accomplished.
- 23 The final disposition of firearms or deadly weapons confiscated pursuant to this Order, whether abandoned by the owner or forfeited by Court Order, shall conform to the property management procedures set forth in General Order P-65.

Service of Court Orders

- 24 The officer assigned to serve a Court Order directing a mentally disordered person to submit him-/herself to psychological evaluation on a particular date/time and location shall:
 - (a) Deliver a copy of the Petition and Order received from the Alameda County Sheriff's Office to the person named in the Order.
 - (b) Complete the Affidavit of Service form.
 - (c) Deliver the original of the Petition, Court Order, and Affidavit of Service to the designated psychiatric facility for return to the Superior Court (ref. WI §5208).

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25 - The officer assigned to serve a Court Order to take into custody and deliver a mentally disordered person for psychiatric evaluation shall:

- (a) Deliver a copy of the Court Order to the person named and take the person into custody.
 - (1) Whenever possible, officers charged with the apprehension of a mentally disordered person should dress in plainclothes and travel in unmarked vehicles (WI §5153).
- (b) Complete the Affidavit of Service form.
- (c) Faciliate the named person's transportation to a designated psychiatric facility.
- (d) Deliver the original of the Court Order and Affidavit of Service to the designated psychiatric facility for return to the Superior Court.
- (e) Deliver a copy of the Court Order to the designated psychiatric facility for its records.
- 26 Regarding officer responsibility for safeguarding a mentally disordered person's personal property (ref. paragraph 16 of this Order), if the detention is made pursuant to Court Order, the responsible officer shall report the property's disposition to the Court in the following format (ref. WI §5211):
 - (a) "I hereby report to the Superior Court for the County of Alameda that the personal property of [name of person apprehended], described generally as [description of property], was preserved and safeguarded by [name of officer, relative, guardian, or conservator]. The property is now located at [address]." [datelofficer signature]

Psychiatric Facility "Walk Away"/Missing Person Protocol

27 - In the event a psychiatric treatment facility notifies this Department that a mentally disordered patient committed by a Berkeley police officer pursuant to WI §5150, or who is a resident of Berkeley, is a "missing person," investigative assistance shall be provided in accordance with General Order M-1.

Mentally III Parolees

- 28 When an officer contacts a parolee who is subject to State mental health supervised release conditions, that officer should notify the person's parole agent as soon as practical following the contact.
 - (a) In the event the contact involves violence, criminal conduct, or results in emergency commitment for psychiatric evaluation, the person's parole agent shall be notified.

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(b) In the event the contact involves criminal conduct, established investigative and custodial procedures shall be followed.

- 29 Non-violent parolees subject to State mental health supervised release conditions who are in need of psychiatric services, but who are not commitable pursuant to WI §5150, should be referred to mental heath services provided by the California Department of Corrections and Rehabilitation Parole Division's Berkeley office.
 - (a) After normal business hours or as may be necessary, Mobile Crisis Team resources may be requested.

References: Penal Code §§1524, 12020 and 12021.3

Welfare and Institutions Code §§5008, 5150 – 5157, 5200 – 5213, 5325.1,

8100 and 8102

Vehicle Code §22651(g)

General Orders C-2, M-1, P-65, R-23, R-31 and V-2

Training and Information Bulletin 105

ATTACHMENT #10 BPD In-Custody Death Investigation



IN-CUSTODY DEATH INVESTIGATION

Xavier Moore

2116 Allston Way #514, Berkeley February 12, 2013 2013-08510







Case Report Summary

Print Date/Time:

04/23/2013 11:48

Login ID:

phong

Case Number:

2013-00008510

Berkeley Police Department

ORI Number:

CA0010300

Case

Case Number:

2013-00008510

Location:

2116 ALLSTON WAY 514

BERKELEY, CA 94710

Reporting Officer ID: 01241 - Brown

Incident Type:

DISTURBANCE

Occurred From:

02/12/2013 23:49

Occurred Thru:

02/12/2013 23:49

Disposition:

Disposition Date:

Reported Date:

02/12/2013 23:49 Tuesday

Offenses

Group/ORI No.

Crime Code

Statute

Description

Counts

Subjects

Туре	No. Name	Address	Phone	lace	Sex	DOB/Age
OTHER PARTY	1	0449 (LLOTON WAY FOO		vion	Eamala	1070
OTHER PARTY	2					
OTHER PARTY	3					
OTHER PARTY	4					
OTHER PARTY	5					
OTHER PARTY	6					
OTHER PARTY	7					
REPORTING PARTY	1					
SUSPECT/OFFE NDER	1					
WITNESS	1					
WITNESS	2					
WITNESS	3					
WITNESS	4					

Arrests

Arrest No.	Name	Address	Date/Time	Туре	Age

Property



Case Report

Summary

 Print Date/Time:
 04/23/2013 11:48

 Login ID:
 phong

 Case Number:
 2013-00008510

phong 2013-00008510

Berkeley Police Department

ORI Number:

CA0010300

-230 Mai	2010-000	00010					
Date	Code	Туре	Make	Model	Description	Tag No.	. Item No.
02/18/2013	B EVIDENCE - MISD.	Digital Photos			photos	27220	1
02/26/2013	B EVIDENCE - FELONY	Miscellaneous			PLASTIC BAG	27116	1
02/26/2013	EVIDENCE - FELONY	Miscellaneous			BUTCHER PAPER	27115	1
02/26/2013	EVIDENCE - FELONY	Miscellaneous	(*		BLACK CORD	27114	1
02/26/2013	EVIDENCE - FELONY	Clothing		£s.	STRIPPED SHIRT	27113	1
02/26/2013	EVIDENCE - FELONY	Miscellaneous			FINGERNAIL CLIPPINGS	27112	1
02/26/2013	EVIDENCE - FELONY	Miscellaneous			DECEDENTS PRINTS	27111	1
02/26/2013	EVIDENCE - FELONY	Blood/Biological			DNA BLOOD CARD	27110	1
02/26/2013	EVIDENCE - FELONY	Miscellaneous			GLASS PIPE W/STEEL WOOL OFF OF BODY	27109	1
02/16/2013	EVIDENCE - FELONY	Digital Photos			photos are stored in the Crime Scene Unit digital photos database VeriPic.	26866	1
02/20/2013	EVIDENCE - FELONY	Digital Video			video clips are stored in the crime scene unit digital photos/video database VeriPic.	26817	1
02/20/2013	EVIDENCE - FELONY	Digital Photos			photos are stored in the Crime Scene Unit digital photos database VeriPic.	26816	1 *
02/13/2013	EVIDENCE: - FELONY	Jewelry/Precious Metals			Evidence #13- silver ring with small clear stones.	26815	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			Evidence #13- black toiletry travel case with "SF" logo on the side containing a black wallet, glide personal lubricant x 2,	26814	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous	(4)		alc Evidence #12- black Remington travel case containing three blue gloves and a	26813	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			black shoe string. Evidence #11 - AT and T statement bill and north shore Agency letter.	26812	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			Evidence #10- small white plastic container brand "Johnson and Johnson" containing three small baggies appeared	26811	1
02/13/2013	EVIDENCE - FELONY	Jewelry/Precious Metals			to be empty, two Evidence #9 - yellow metal link chain two pices.	26810	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			"US POLO ASSA" containing numerous small blue plastic items, yellow capsule style pills (G50	26809	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			Evidence #8 - white coffee cup with white residue and tissue inside of coffee cup.	26808	1
02/13/2013	EVIDENCE - FELONY	Jewelry/Precious Metals			Evidence #7- yellow metal hoop earring.	26807	1
	EVIDENCE - FELONY	Jewelry/Precious Metals			Evidence #7- silver metal hoop earring.	26806	1
02/13/2013	EVIDENCE - FELONY	Currency, Notes, etc.			Evidence #7- two pennies .	26805	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous			Evidence #7- small brown box with elephant picture - containing four loose pilss, a pin and bobby pin.	26804	1
02/13/2013	EVIDENCE - FELONY	Miscellaneous				26 803 1	I
02/13/2013		Miscellaneous			= in	26802 1	



Case Report

Summary

Print Date/Time: 04/23/2013 11:48

Login ID:

phong

Case Number:

2013-00008510

02/13/2013 EVIDENCE -

Miscellaneous

FELONY 02/13/2013 EVIDENCE -

Clothing

FELONY 02/13/2013 EVIDENCE -

Clothing

FELONY

02/14/2013 SEARCH

Drugs (Marijuana)

WARRANT -

FELONY EVIDENCE

Berkeley Police Department

ORI Number:

CA0010300

Evidence #3 - small white straw.

26959

Evidence #2 - leopard print fabric sleepwear brand "freeplay" one size.

26801

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Evidence #1 - leopard print fabric with a

26800

knot or tied in the center - brand of

garment "H&M".

0.4 grams - MARIJUANA- One stamp-

27390 1

sized ziploc baggie containing a green

leafy substance.

Vehicles

No. Role **Vehicle Type** Year Make Model License Plate State Color

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REPORTING OFFICER Brown, Gwendolyn LINVOLVMENT LAST NAME, FIRST NAME MIDDLE	2013-00008510 ² ₅ DATE / TIME WRITTEN 02/13/2013 02:11:59 DOB AGE 41
Brown, Gwendolyn	02/13/2013 02:11:59
INVOLVMENT LAST NAME. FIRST NAME MIDDLE	1-2
1 SUSPECT OFFENDER Moore, Xavier Christopher	
RACE SEX HEIGHT WEIGHT HAIR EYES DRIVERS UC. STATE B M 5'8 340 BRO BRO CA	PFN PRIMARY LANGUAGE
RESIDENCE ADDRESS 2116 Aliston WAY 514, BERKELEY, CA 94710-	PRIMARY PHONE
ALIAS / MONIKER E-MAIL ADDRESS	OTHER PHONE
EMPLOYER / SCHOOL TYPE EMPLOYER / SCHOOL NAME	OCCUPATION
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INVOLVMENT LAST NAME, FIRST NAME MIDDLE	DOB AGE
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EMPLOYER / SCHOOL TYPE EMPLOYER / SCHOOL NAME	OCCUPATION
EMPLOYER / SCHOOL ADDRESS	BUSINESS PHONE

CASE NARRATIVE



BERKELEY POLICE DEPARTMENT

POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 3 OF 5

PRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

REPORTING OFFICER Brown, Gwendolyn

02/13/2013 02:11:59

Summary:

RP Hayes called BPD to report he and roommate Moore had a verbal dispute. Hayes said Moore was schizophrenic, off his meds, and had kicked him out of the apartment. Hayes also reported that Moore possibly needed to be 5150ed. Officers Tu, Smith, and myself contacted Moore in the doorway of his apartment. After interviewing him and being told that he had a \$10.000 dollar warrant. The decision was made to physically detain Moore for a 5150 evaluation and a possible warrant arrest. Moore resisted being handcuffed. A struggled ensued. Moore subsequently stopped breathing. BFD transported him to Alta Bates Hospital. Moore was pronounced dead at 0134 hours.

Scene:

The Gaia Building is located at 2116 Allston Way. This is multi-level, multi-apartment building. Apartment #514 is a one bedroom, located on the fifth floor, on the north side of the building. Upon entering, there is a bathroom to south. Straight ahead (west) is the living room. In the living room, on the north wall was a large standing lamp. Just west of it, on the floor, was a twin size mattress. South of the mattress was a chair. The kitchen is southwest of the living room. West of the kitchen, is the bedroom. The struggled started outside the front door and ended on the mattress, in the living room. The apartment was in disarray prior to BPD officers arrival. Suspect Moore was dressed in a animal print strapless, tube type top, and a animal print wrap around skirt. He was wearing no underwear. During the struggle Moore's skirt ended up around his ankles, and he was primarily nude. I saw no visible injuries on Moore. While BFD was rendering aid to Moore, BFD moved the mattress and bedding into the bathroom.

Statements:

RP Hayes said he and Moore are roommates and have known each other for 15 or more years. He went on to say that Moore has uses crack cocaine and meth on a regular basis since knowing him. Additionally, Moore drinks alcohol almost every day, to get drunk.

Hayes said today he arrived home around 5 or 6 pm. Moore was high on speed and had been drinking. He asked for money to purchase more drugs and alcohol. Hayes refused. The two argued and Moore told him to get out. Fearing for his safety, Hayes left the apartment and called BPD. (See attached statement)

Witness Sterling, Moore's caregiver, said between 10:30 and 11:00 pm he and Hayes arrived at Moore's apartment. Moore's girlfriend, only known as "Angel" was there. He (Sterling) started preparing food for Moore. During that time he observed Moore's demeanor and described it as being agitated and upset. Sterling said Moore was pacing the floor, smoking weed, and drinking alcohol. Sterling said he asked Hayes if Moore been taking his prescribed medication for schizophrenia. Hayes told him that Moore had not taken his meds for awhile.

Sterling said Moore continued talking but was making no sense. Sterling said Moore wanted more



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO. 2013-00008510

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PRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

CASE NARRATIVE CONTINUATION

REPORTING OFFICER
Brown, Gwendolyn

DATE / TIME WRITTEN 02/13/2013 02:11:59

drugs and started arguing with Angel about meth. Moore told Angel to get out and threw a chair at her. Sterling said Moore was angry because he thought Angel had drugs and was holding out on him. Angel left and Moore started arguing with Hayes. At the same time, Moore was also talking to him. Sterling said Moore was out of breath and having difficulty breathing. He was attempted to calm him down then BPD arrived.

Sterling said he remained inside the apartment while BPD talked to Moore who was standing in the doorway. He said Moore was "telling the officers jibberish about the government and not feeling safe. Sterling said he could not understand Moore because he wasn't making any sense. He also said he had never seen Moore act like that or talk like that before, so he knew something was seriously wrong with Moore.

Sterling said Moore and the officers suddenly started scuffling outside the apartment. He said Moore was not cooperating with the police at all. He said he heard the police telling Moore to "stop resisting," but he wouldn't. "He kept resisting and speaking jibberish." Sterling said he was asked to wait outside. He left the apartment, quickly because he was afraid Moore was going to freak out and attack him. Sterling said Moore was "running away from the officers like a raging bull" and he had to get out of the way to avoid getting trampled. Sterling closed by saying that he has known Moore for about 23 years and knew that Moore used crack cocaine. He thought Moore recently stopped using cocaine and substituted it with meth, weed, and alcohol, that he uses regularly. (See attached statement)

Investigative Narrative:

On 2-12-13, Officer Smith and I were dispatched to 2116 Allston Way #514 for a PC 415 call. Officer Tu #38 attached himself to the call. Officer Tu and I were the first to arrive on the scene. We attempted to gain entry into the secured building but were initially unsuccessful. I had the dispatcher contact RP Hayes to let us in. Shortly there after, Hayes walked up and said he had called. Hayes went on to say his roommate Moore was schizophrenic, off his meds, and had kicked him out of the apartment because he would not give him money to purchase drugs and alcohol. Hayes said he left the apartment because he thought Moore was going to attack him and that he feared for his safety. At that time, Officer Smith arrived. He asked me if the suspect's name was Xavier Moore. I responded "Yes." Smith then said Moore had a \$10,000 dollar want out of San Francisco. I told him Moore recently relocated to Berkeley from San Francisco.

Officer Tu, Officer Smith, Hayes and I went upstairs to apartment 514. Hayes unlocked and opened the door. I directed him to step away. I called out to Moore from the doorstep. Moore came to the door and I questioned him as to what was going on with him and roommate Hayes. Moore was unable to answer my questions. He appeared to have difficulty focusing. Moore became increasingly angry and kept rambling something like the FBI was following him and that we were not real police officers. Moore's behavior suddenly changed. He started acting as if he knew me personally. He called by the names, Michelle, Carol, and Wanda. When I would tell him that I was not either of those people. His response was, "Oh I see them behind you." Moore was making statements about dinosaurs and people, that did not make any sense.



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

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FRIMARY OFFENSE / OCCURRED INCIDENT DISTURBANCE

CASE NARRATIVE CONTINUATION

reporting officer Brown, Gwendolyn DATE / TIME WRITTEN 02/13/2013 02:11:59

While talking to Moore, Officer Smith did a computer check on Hayes. He advised me that Hayes had a outstanding warrant. I had him confirm it. I arrested Hayes on warrant and directed Officer Smith to transport him to the BPD jail. I then made the decision to physically restrain Moore for a 5150 evaluation and the \$10,000 dollar warrant that I thought Officer Smith had confirmed. I informed Moore that he had a warrant and that he would be going to the police department. Moore became very angry and said he was not going. He then said he was going inside to call the FBI to clear up the matter. I told him he could make the call from the station. He continued saying he would call the FBI from his apartment. I told Moore that he needed to come with us. He flat out refused. He was unresponsive to my verbal commands.

Moore's behavior became increasingly aggressive. I signaled to Officer Tu to go hands on and assist me in placing Moore in handcuffs. Officer Tu grabbed Moore's left wrist. I simultaneously grabbed Moore's right wrist, in an attempt to apply a control hold and put the handcuffs on. Moore immediately started yelling, "No, No!" He attempted to pulled away. Officer Tu and I maintained our grasps. Moore continued to violently pull away. While doing so, he pulled Officer Tu and me into his apartment. We all fell on a mattress that was on the floor, against the east wall. During our struggle to handcuff Moore, I called for additional officers/Code 3 Cover. At the same time, I noticed a BMA, later identified as witness Sterling, in the apartment. For officer safety reasons, I ordered him out of the apartment. Officer Tu and I continued struggling to restrain Moore who was violently resisting. I ordered him to stop. There was no compliance. Officer Tu and I managed to get one hand cuffed. Moore had the other hand under his body and he was laying on his stomach. BPD officers Mathis #80, Gardner #121, and Castmiler #104, arrived and helped us cuff the other wrist. Due to Moore's large size, two sets of cuffs were used.

Moore continued to violently resists. A request for the wrap restraint device was made. It arrived, but was to small. Officers were able to use the ankle strap to secure Moore's ankles. Moore continued to violently resist, a request for BFD restraints was made. Moore continued to resist for a brief time before he yelled, "Ok, Ok!" He appeared to be calming down. He suddenly stopped resisting. I looked at his chest and saw no movement. We rolled him on his side. I saw that he was breathing, he had a pulse and he moved his head. Approximately one minute later Moore's chest stopped moving. I checked for a pulse. Moore was no longer breathing and he had no pulse. BFD was requested Code 3. We immediately removed the handcuffs, laid him on his back and began CPR and was relieved by BFD. BFD Engine 5/Medic 1 transported Moore to Alta Bates hospital. Dr Benjamin Bonnes pronounced time of death at 0134 hours. ID Tech Jamison #452 processed the scene.

Officers Tu, Smith, Gardner, and Mathis supplemental reports are attached. RP Hayes and Witness Sterling's statements are attached.



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

CASE NO.



Tu, Kenneth

DATE / TIME WRITTEN 2/12/2013 23:49

SUPPLEMENTAL INVESTIGATION:

On 2/12/13 at approximately 2357 hours, I responded to assist with a report of a disturbance between roommates at 2116 Allston Way, the Gaia Apartment Building. I arrived on scene with BPD Officers Brown #16 and Smith #3. We contacted the reporting party, Hayes, in front of the building. Hayes reported that his roommate, Moore, was schizophrenic and off of his medications, and had kicked him out of the apartment. Hayes stated that Moore needed to be placed on a WI 5150 hold.

Hayes took us up to his residence, apartment #514. Hayes opened the front door with his key, and Officer Brown called into the apartment from the doorstep.

Moore came to the front door, and Officer Brown initiated conversation with him. I stood by as a cover officer to keep Hayes separated from Moore. During the contact, Moore became increasingly agitated, and made numerous paranoid, rambling statements. Moore repeatedly stated that he was being followed by the FBI, and that he did not believe that we were real police officers.

During the investigation, Officer Brown placed Hayes under arrest for an active warrant, and directed Officer Smith to transport him from the scene. Officer Smith placed Hayes in handcuffs, and then escorted him downstairs to his patrol vehicle. I remained on scene with Officer Brown.

Officer Brown asked Moore to come outside to speak to her. Moore agreed, and stepped outside of the apartment onto the exterior walkway. Officer Brown then informed Moore that he was being detained for a warrant. Moore became extremely upset and was unresponsive to her verbal commands. Officer Brown then signaled me to attempt to detain Moore in handcuffs, so I grabbed him by the left wrist with both of my hands. Moore immediately began screaming and violently pulling away, and then ran back into the apartment, pulling Officer Brown and I in with him as we tried to detain him.

A person later identified as Sterling was inside of the apartment's living room at the time, and for the safety of all parties present, Officer Brown directed him to leave the apartment. Sterling complied and went outside.

Moore was able to pull himself out of my grasp, and fell on his left side onto the mattress in the living room. He then began kicking me as I attempted to place his right arm in a control hold. I sprawled onto his hip in an attempt to prevent him from further kicking me, and gained control of his right arm by placing it in a rear wrist lock. Moore rolled onto his stomach with his left arm under his body, preventing us from controlling that arm.

Officer Brown requested Code-3 cover, and several other BPD units responded to assist. Moore continued to violently resist by trying to buck me off of him, kicking me, and trying to pull his right arm away from me. After struggling for several minutes, we were able to gain control of Moore's left arm and place him in handcuffs. Due to his size, we secured his arms behind his back with two sets of handcuffs.

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE OF

REPOR	RTING	OFFICER
Tu.	Ker	neth

2/12/2013 23:49

After being secured in handcuffs, Moore continued to scream and kick, so other BPD Officers used the ankle strap of a WRAP device to secure his ankles. Moore continued resisting for a short period of time before appearing to calm down. Once he calmed, we rolled him onto his side, and Officer Brown confirmed that he was breathing and had a pulse.

However, after approximately one minute, Officer Brown reported that Moore was no longer breathing and no longer had a pulse. We immediately removed him from handcuffs and began CPR. I started compressions until being relieved by BFD paramedics.

I escorted BFD paramedics as they transported Moore to Alta Bates Hospital. I stood by at Alta Bates Hospital until being relieved by Officer Frankel #26.



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

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REPORTING OFFICER
Smith, Brandon

DATE / TIME WRITTEN 2/12/2013 23:49

CASE SUPPLEMENTAL:

On 2-12-13 at approx 2354hrs I was dispatched to 2116 Allston Way Apt 514 as a cover officer to a report of 5150 off their medication. I arrived on scene and met with Ofc Brown #16 and Ofc Tu # 38 IFO the address. The RP (Hayes) walked up to us and let us in to the apartment complex. Hayes said that his roommate (Moore) had kicked him out and needed to be 5150'd.

I went upstairs with Ofc Brown, Ofc Tu and Hayes. Hayes unlocked the apartment front door and Ofc Brown called out to Moore. Moore came to the door and stepped out onto the landing and appeared very agitated and angry. Ofc Brown began speaking with Moore and after Ofc Brown verbally identified him I conducted a records check of Moore and Hayes with Telecom. During this time Moore grew increasingly agitated and had difficulty staying on topic. Moore was at times incoherent and rambled on about the FBI watching him.

Hayes was found to have a \$5,000 warrant out of San Francisco. I told Hayes about his warrant and that he was going to be arrested. Hayes was cooperative and I walked him downstairs. I placed Hayes in handcuffs and began to search him incident to arrest when over the police radio I heard Ofc Brown request code 3 cover. I placed Hayes in the back seat of my patrol car and ran back upstairs to apartment 514.

Moore was on the bed on his stomach resisting Ofc Tu and Ofc Brown. Ofc Tu had Moore's right wrist in a handcuff and Ofc Brown was trying to gain control of Moore's left wrist. I helped Ofc Brown get Moore's left arm behind his back so that he could be placed in handcuffs. During the incident Moore continued to struggle and pull his arm away from us.

As soon as Moore was placed into handcuffs other officers arrived and I went back downstairs to ensure that Hayes was still in the back of my vehicle and ok. I removed Hayes and searched him removing all of his property from his person and placed it into a paper bag. Ofc Kaplan transported Hayes to the Berkeley Jail and booked him for his warrants.

I contacted Hayes in the Berkeley Jail and obtained a signed written statement from him.

Hayes said in summary that he lives with Moore at 2116 Allston Way #514 and that they have known each other for about 15 or more years. He said that Xavier has used many drugs on a regular basis since he has known him and that he mostly uses crack and methamphetamine as well as drinks alcohol daily to get drunk. He said that on 2-12-13 when he returned home around 5-6pm that Moore was high on methamphetamine and was drunk. He said that when Moore is high and drunk he is mean and wants to fight. He said that Moore asked him for money to buy more alcohol and he told Moore no. Hayes said that Moore became very angry and wouldn't leave him alone. They were arguing and Hayes said that because he has a temper he decided to try and ignore Moore. Moore then told him to just leave. Hayes said that he then called the police who took him to the apartment where they spoke with Moore. He said that Moore was acting "ziggity boom like a mother fucker". When asked what that meant Hayes said that "he was acting like he does when he's really high and drunk." Hayes said that Moore had threatened him earlier

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

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REPORTING	OFFICER
Smith,	Brando

DATE / TIME WRITTEN

2/12/2013 23:49

and thought that Moore would attack him and that is why he left. He said that Moore had a history of violence and he had stabbed someone in San Francisco a few years prior. See Hayes signed written statement for further.

Nothing further to report.



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2013-00008510

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

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REPORTING	OFFICER
Mathie	Brian

ARRAT

DATE / TIME WRITTEN 2/12/2013 23:49

Case Supplemental:

On 2-13-13 at aprox. 0030 hrs I heard Ofc Brown #16 broadcast a request for additional units to 2116 Allston #514. I responded code three to the scene. Upon entering the apartment I observed Ofc Brown, Ofc Tu #38 and Ofc Smith #3 struggling to control a very large person on the apartment floor. I grabbed both of the subjects ankles in an attempt to control the legs because the subject was kicking at the officers. I crossed his ankles, trying to hold them down, but got kicked off. I re-acquired my grip and was able to stop the subject from kicking. I was given the ankle restraint strap from The Wrap and applied it to the subjects ankle with assistance from another officer.

I left the apartment to return to my patrol vehicle to retrieve spit hoods and escort BFD upon their arrival. I heard a broadcast that CPR was being preformed in the apartment prior to BFD's arrival on scene. I accompanied BFD back upstairs to #514.

I was assigned by Sgt Cardoza #S-31 to attempt contact with residence of the surrounding apartments.

At#	, I got no answer.
2	
At # anything "until all the police arrived."	the residents there told me that they had not heard
I stood by as ID Tech Jamison #452 door and returned the keys to the BP	took photos in #514. When she was finished I locked the D jail.
<u>Case Disposition:</u> As set	



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

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REPORTING OFFIC	ER
Gardner, Ti	m

DATE / TIME WRITTEN 2/12/2013 23:49

SUMMARY:

On the listed date, just after TOR, I heard a broadcast of additional units needed for a call at 2116 Allston way, #514. It was apparent from the broadcast that BPD officers were involved in a struggle with a violent subject. I responded Code Three and when I reached the apartment, I saw several BPD officers struggling to take an extremely large and violently resisting partially naked person into custody. The person appeared to be approximately four hundred pounds and it took several officers combined efforts to control his hands. Along with several other officers who arrived with me, we finally managed to place him into handcuffs and called for BFD to respond to assist with transporting him. After we had successfully placed him in handcuffs, it appeared he had suddenly stopped breathing. I assisted with immediately uncuffing him while other officers requested emergency medical assistance and began chest compressions. BFD arrived shortly thereafter and began efforts to revive the person.



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO.

2013-00008510



REPORTING OFFICER Kastmiler, Nikos DATE / TIME WRITTEN

2/12/2013 23:49

SUPPLEMENTAL REPORT:

On 2/13/13 at approximately 0030 hours I heard Ofc. Brown say over the radio to "send emergency cover". I responded to 2116 Allston WAY #514 to assist.

I arrived on scene and entered the apartment. I observed a very large male, later identified as Moore, laying face down on top of a mattress with Officers struggling to control him. Ofc. Tu #38, Ofc. Brown #16, and Ofc. B. Smith #3 were controlling Moore's arms and legs as he struggled to break free from their control. Moore was handcuffed and I assisted in controlling Moore's arms and preventing him from getting up. I remained with Moore while waiting for BPD Officers to bring a WRAP device for Moore, While we were deploying the WRAP Moore stopped struggling. We rolled Moore on to his left side. About a minute later, Ofc. Brown stated that Moore had stopped breathing. We checked for a pulse and noticed that he no longer had a pulse. When we discovered this we immediately removed Moore's handcuffs and laid him flat on his back. We began doing CPR on Moore until BFD arrived on scene and began emergency treatment.

I remained on scene and contacted Sterling. Sterling was inside the apartment with BPD Officers and Moore during the initial incident. Sterling provided a written statement about the incident.

(SEE ATTACHED WRITTEN STATEMENT)



BERKELEY POLICE DEPARTMENT POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 SUPPLEMENTAL

2013-00008510

CASE NO.



Phillips, Amber

DATE / TIME WRITTEN 02/13/2013 04:34:39

On 02/13/13 at about 0030hrs, I responded to 2216 Allston Way apartment # 514, because officers were requesting "Code 3 cover." I arrived on scene with Sgt Cardoza # S-31 at about 0033 hrs, and we both entered apartment #514 together. When I entered the apartment, I saw Ofc Tu #38, Ofc Brown #16, Ofc Gardner #121 and Ofc Mathis #80, attempting to restrain an individual on a mattress on the floor of the living room area. The person they were restraining, who was later identified as Moore, was lying on his stomach with his hands cuffed behind his back. Moore was violently kicking at officers, particularly Ofc Mathis, who was attempting to gain control of his feet. Sgt Cardoza deployed the WRAP restraint device and I provide the ankle strap to Ofc Mathis, who secured Moore's ankles. Officers did not attempt to place the leg and chest pieces of the WRAP restraint device on Moore, due to his large size (approximately 350 +lbs). At about 0034hrs, I contacted BPD Dispatch via radio and requested that BFD respond to our location with a gurney. I requested the gurney because it was apparent that officers would be unable to move or lift Moore due to his large size, especially since his apartment was on the fifth floor. Once Moore calmed down, officers rolled him on left side and Ofc Brown confirmed he was breathing and had a pulse. Although Moore was breathing, it appeared he was having difficulty. I advised BPD Dispatch that we would also need BFD paramedics because Brown was having difficulty breathing.

At around to 0041hrs, Ofc Brown noticed that Moore was no longer breathing and did not have a pulse. At this time, I advised BPD Dispatch that Moore was not breathing and officers would be starting CPR. Officers immediately removed the handcuffs from Moore and placed him on his back. Ofc Tu gave Moore chest compressions until BFD arrived on scene and took over. Once Moore was transported to Alta Bates Hospital by BFD, I assisted Sgt Cardoza in managing the scene and did the following:

Sgt Cardoza and I directed Ofc Tu to follow BFD to Alta Bates Hospital to get an update on Moore's condition.

I directed Ofc McIntosh to conduct a canvass of the fifth floor or 2116 Allston Way to determine if any neighbors had contact Moore prior to our arrival.

I directed Ofc Kastmiler to take a written statement from Sterling.

I contacted Ofc Smith via phone while he was in the BPD jail and directed him to take a written statement from Hayes.

At about 0204hrs, Sgt Cardoza took over the scene as the Scene Supervisor and I was released from the scene.



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

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	INVOLVMENT LAST NAM	IE, FIRST NAME MIDDLE				DOB	AGE
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	A M RESIDENCE ADDRESS					PRIMARY PHONE	
	ALIAS / MONIKER		E-MAIL ADDRESS			OTHER PHONE	
	EMPLOYER / SCHOOL TYPE EMPLOYER / SC	HOOL NAME				OCCUPATION	
	EMPLOYER / SCHOOL ADDRESS					BUSINESS PHONE	
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	PLUS / BOUNES		E-MAIL ADDRESS			OTHER PHONE	
	EMPLOYER / SCHOOL TYPE EMPLOYER / SC	HOOL NAME				OCCUPATION	
	EMPLOYER / SCHOOL ADDRESS					BUSINESS PHONE	
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	EMPLOYER / SCHOOL ADDRESS			9	77	BUSINESS PHONE	
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	W F RESIDENCE ADDRESS					PRIMARY PHONE	
	ALIAS / MONIKER		E-MAIL ADDRESS			OTHER PHONE	
	EMPLOYER / SCHOOL TYPE EMPLOYER / SC	HOOL NAME				OCCUPATION	
	EMPLOYER / SCHOOL ADDRESS					BUSINESS PHONE	-
_	INVOLVMENT LAST NAM	ME, FIRST NAME MIDDLE				DOB	AGE
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Ì	PERINENCE ANNEESS	704-	Landy apply			PRIMARY PHONE	
	ALIAS / MONIKER		E-MAIL ADDRESS			OTHER PHONE	
	EMPLOYER / SCHOOL TYPE EMPLOYER / SC	HOOL NAME				OCCUPATION	
	EMPLOYER / SCHOOL ADDRESS					BUSINESS PHONE	



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 3 OF

REPORTING OF	FICER
McIntosh	. Elgin

DATE / TIME WRITTEN 2/12/2013 23:49

INVESTIGATIVE NARRATIVE:

On 2-13-12 at 0057 hrs., I was dispatched to 2116 Allston Way per Sgt. Phillips' request. When I arrived Sgt. Phillips directed me to contact specific residents on the fifth floor to determine if anyone saw or heard any disturbances. I contacted the following:

When she opened her door, she saw the door of unit 514 was opened. She then heared a female voice inside yelling. Said that she could not understand what the female was saying. Said that she did not see the female. Said that the female was known for knocking on the residents' doors and asking for cigarettes.

lives in # said that he was listening to music and did not hear any disturbance.

lives in # said that he did not hear any disturbance.

lives in #: said that she was asleep and did not hear any disturbance.

lives in # said that she was asleep and did not hear any disturbance.

lives in # Imim said that she did not hear any disturbance.

There was no answer in unit 506.

Nothing further.

Berkeley Police Department 08*

Berkeley Police Department

NO. 2013-8570

Statement of: STELLING, EDURED GRORGE THE
Address: 601 HAYES ST SAN FRANCISCO Phone: NO PHONE
Thomas and the second s
I'VE NEVER SEED XAVAR ACTURE THAT OR TALK LIKE THAT
BEFORE I KNEW THERE WAS SOMETHING SERIOUSLY WRONG WITH
HIM TODAY.
AT ONE POINT XAVIAR AND THE OFFICERS STARTED TO SCUFFIE.
I'M NOT SURE HOW IT HARPIND BELAUSE I WAS INSIDE ADD
COMPAT HEAR THE MOVE CONVERSATION BECAUSE OF THE RADIO
AND TV. THE SUFFLE STAPPED OWISIDE THE DOORWAY AND
THEN CONTINUED INSIDE THE ADARTMENT. XANIBE WASN'T DEING
COOPERATIVE -ITH THE POLICE AT ALL, THE OFFICERS KEPT
TELLING KAWAR TO "STOP EXSISTING" BUT HE WOULDN'T. HE
KEPT RESISTING ND SPRAKING JIBBERISH. OFC. BROWN TOLD ME
TO WAIT ONTS IDE, SO I LEFT THE APARTMENT QUICKLY AND
WAITED OUTSIDE. I WAS WORKED THAT XAHAR WAS GOING TO
FREAKOUT AND ATTACK ME TOO AS I WAS TRYING TO GET OUT.
XAVIAR WAS RUNNING AWAY FROM THE DEFICERS LIKE A RAGING BILL
I HAD TO DUCK OUT OF KANARIS WAY TO AVOID GERTING TRANSPORD.
I WAITED ONTS OR THE APARTMENT NEAR THE ELEVATOR WHILE MORE
OFFICERS SHOWED UP. I DIDAT GO BACK INSIDE THE APARTMENT WHILE
sevian has there.
I'VE KNOWN KAVIAR AND HIS BOYFREAD TORN FOR ABOUT 23 YEARS, I KNOW THAT XAVIAR
ASED TO USE CRACK LOCAIN'T BUT I THINK HE LECENTLY STORPED. HOW HE USES METH, WAS
AND ALCOHOL REGULARLY, I RECENTLY ACCEPTED A PART TIME JOB AS YAVIAL'S CARETAKED
AND I HAD BEEN OVER TO THE APPRETIGHT FOR ABOUT 3 DAYS BS CARETAKES. TO DAY WE
WELL SUPPOSED TO SIGN THE FINALIZED PAPERS AND LOOK IN TO A LARGER AMERITMENT.
THIS IS A TRUE AND CORRECT STATEMENT AS TOLD TO OFC KASTMICER #104
Witnessed: OFC. KASTMILER #104
Date and Time: 2/13/13 0159 Signed: 5 9 1 Am + 157
Berkeley Police Department 06'

1052

Berkeley Police Department

NO. 2013-8576

Statement of: STERUNG, EDWARD GEDRGE III

Address: 601 HAYES ST SAN FRANCISCO

Phone: NO PHONE

TODAY, 2/12/13, AT ABOUT 10:30-11PM 1 ARRIVED AT XAVIAR'S APARTMENT WITH XAVIAR'S DOYFILEND JOHN HAY ES. WE WERE INSIDE XAMON'S APARTMENT AND I HAS TRYING TO MAKE XAMIAN SOUNG 15009. XAUIAL'S DEMEASON APPEARED AGGITTATED ASD UPSET HE WAS PACIAL AROUND AND IN THE MIDDLE OF SMOKING WEED AND DRINKENT ALCOHOL XANIAR WASN'T ABTINE LIKE HIMSELF AND 1 ASKED JOHN IF KAVIAN HAD BEEN TAKEN HIS PERSCRIPTION MEDICATIONS AND JOHN SAID HE HADN'T FOR A WHILE WHEN B , was truck to yourse HE WASN'T MAKENIE SINSE ATT XAVIAR WRELE AROUND ABOUT METH. XAVIAR TOUS ANGEL "A you point HAVE ANY MORE DRUGS, you CAN GET OUT. THEY CONTINUED ARBUING AND XAVIAR PICKED UP A CHAIR AND THREW IT AT ANGEL, BUT IT DIDN'T HIT HER. XAVIAR WAS UPSET BECAUSE HE THORGET THAT AUGEL HAD DRUGS AND WAS HOUDING OUT ON HIM AUGEL LEFT AND THEN IT WAS JUST ME, JOHN AND XAVIAR. S MUNTES CATER XAMAR TOLD JOHN "YOU CAN LEAVE TOO", SO HE DID WITHOUT A FUSS, I CONTINUED CLEANING AND XAWIAR KEPT PACRAG AROUND AND ACTIVE STRANGE, WHEN HE WAS TAKENE TO ME HE WAS OUT OF BREATH ASD HAMM DIFFICULTY BREATHING. ! TRUED TO TALK TO KANIAL AND I ASKED HIM IF I CONLY HELP WITH SOMETHING ON TAUK TO HIM ADOUT WHAT HAS GOING ON writt Him. THE POCICE SHOWED UP A FEW MINNTES CATER AND SPOKE TO XAVIAR IN THE DODRINAY WHILL I WAS STILL INSIDE. AT ONE POINT YAMAR WAS TELLING THE OFFICERS TIBULISH ABOUT THE GOVERNMENT AND NOT FEELING SAFE. I COMEDIT WORKSTAND WHAT YAVIAR WAS TALKING ABOUT BELANGE HE WASN'T MAKING SENSES

Witnessed: Witnessed: WILL KASTMILE #104

Date and Time: 2/13/13 0159

Signed: DA Signed

1178C3

Berkeley Police Department

NO. 2013-8510

Statement of: John Hayes
Address: 2116 Auston War #514 Phone
MY NAME IS JOHN HAYES AND I LIVE AT ZILL AUSTON WAY APT SIN
WITH MY ROOM MATE XANTER. XANTER AND I HAVE KNOWN EACH OTHER
FOR ABOUT 15 OR MORE YEARS, XAVIER HAS USEN MANY NEWS ON A REGULAR
BASIS SINCE I HAVE KNOWN HIM. HE MOSTLY USES CRAPK AND METH AND
DRINKS ALCOHOL ALMOST EVERY DAY TO GET DRINK.
TODAY WHEN I GOT HOME AT AROUND 5 OR 6 PM KANTER WAS HIGH ON
SPEED AND DRINK. WHEN HE'S HIGH AND DRINK HE BECOMES MEAN AND WANTS
TO FIGHT. HE ASKED ME FOR MONEY TO GET MORE SAGED AND ALCOHOL AND
I TOUR HIM TO SE TO ASK SOMEONE FLISE AND TO LEASE ME NOME
XAVIER GOT REALLY ANGRY AND ABULDUT LEAVE ME ALONE. WE BEEN
ARGUING AND BECAUSE I KNOW I HAVE A TEMPER I TRIED TO IGNORE
XANTER. XANTER THEN TOLD ME TO JUST BET OUT.
I CALLED THE POLICE AND THEY TOOK ME UPSTAIRS WHERE THE OFFICERS
SPOKE WITH ME AND YOUTER. XAVIER WAS ACTING "ZIGGITY BOOM! LOW
A MOTHER FUCKER". THAT MEANS HE WAS ACTING LIKE HE DOES WHEN
HE IS REALLY HICH, XAVIER TOLD ME HE WAS GOING TO FICK ME
UP EARLIER. I THOUGHT THAT HE WAS GOING TO ATTACK ME AND THATS
WHY I LEFT. XAVIER HAS HAD A HISTORY OF BEING ANGRY AND
STABBED SOMEONE IN SANFAMILISTO A FEW YEARS ASO.
THIS IS A TRUE AND ACCURATE STATEMENT AS TOOD TO OFC & SMITH \$3
Witnessed: #3
Date and Time: 2-13-13/0141 Signed:



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO.

2013-00008510

PAGE 1 OF

-	NC	SECTION - TY	PE			ATTEMPT / COM	MIT COUNTS	MO FACTORS		☐ MPERSCHATE P	LICELAW	TILL TAP		
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	3							CLOSING OPERANG	C CLOSING OPERING TAKE D OPPREASED D EMACRIMATED D FREE MEMBEROR D FOLL ORD ATTAIN AS DOCUMENT		MASTURBATED		PECT ADD VICTEM ADD	
	4							☐ DISROBED BY SUEP					ALCOHOL	
	5	-						☐ EMCULATED ☐ FIRED WEAPON ☐ FOLLOWS STALKS?					DRUGS	
	6							FORCED TO COVER FORCED TO DISECT	FACE SE ESLISPECT	RAFED WITH FOR! O ROBBED HEAR AT D SECURITY CAMER	M.	BRICKROCK	OPERCELAN CHIPS	
	7							☐ FORCED TO REAR O ☐ FORCED VICTIM TO ☐ GLASS OR PAMEL RE	CROUND	DHAVED KEY DENOPLIFT GOVE I		☐FLASHLIGHT ☐GLASS CUTTER		
	8							☐ GLOWER WORM ☐ HATE MOTIVATED ☐ HOTWEE ☐ IGNITION PUNCH	}	D STRUCK VICTUM WITH HANDS FEET		□ KEYILOCKPICK □OTHER □PLERS	☐ TAPE WIRE ☐ VICE GRIPS	
)		GLARY DETAILS				METHOD:		1 1 telm Non Part		, manyan		D. COLO	E VICE GRIPS	
		INING ROOM WIND UCT VENT ROOF LOOR RONT DOOR ARAGE ARAGE DOOR ITCHEN WINDOW VING ROOM WIND	OW [] WALL	CLE DOOR - D CLE DOOR - F CLE DOOR - F CLE WINDOW L	RIVER FRONT RIVER REAR ASSENGER FRO ASSENGER REA	R	M TUNK. OPEN	OINING ROOM DUCT VENT RO FLOOR FRONT DOOR GRAAGE GRAAGE DOARAGE DOOR KITCHEN WINI	DOF SI	AR WINDOW (DING GLASS DOO HICLE DOOR - DRI HELE DOOR - PAS HICLE DOOR - PAS HICLE WINDOW LL	VER FRONT VER REAR SENGER FROI		eh Nt unk.	
s	NO.	INVOLVMENT	AR - Arm	Company of the second	- Involved Pa	arty MP - Mis	ssing Party Ol	P - Other Party	SU - Suspec		121 Earl 200 VIII	TO PRINCE UP TO THE PARTY OF TH		
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	3	DESCRIPTION											-	
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			OLICE DEPARTMEN' ERTY CONTROL	2013-000	08510 PAGE 2 OF 4
	orting officer imison, Catherine			02/18/2013 23:	:40
COD	DE: S-STOLEN F-FOUND S/R-	STOLEN/RECOVERED	K-SAFEKEEPING E-E	/IDENCE	
1	E 85 EACH Digital P	hotos	SERIAL #	VALUE	SPECIAL HANDLING
2	DESCRIPTION		SERIAL 9	VALUE	SPECIAL HANDLING
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4	CODE QTY TYPE DESCRIPTION		SERIAL #	VALUE	SPECIAL HANDLING
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13	DESCRIPTION TYPE		SERIAL #	VALUE	SPECIAL HANDLING
14	DESCRIPTION				
15	BESSELF-FIGH		SERIAL#	VALUE	SPECIAL HANDLING
16	DESCRIPTION TYPE		SERIAL#	VALUE	SPECIAL HANDLING
	FIREARMS				
1	MAKE MODEL DESCRIPTION		SERIAL #	FINISH	VALUE
2	MAKE MODEL DESCRIPTION		SERIAL#	FINISH	VALUE
3	MAKE MODEL DESCRIPTION		SERIAL#	FINISH	VALUE



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

CASE NO.
2013-00008510
2010-0000010



nison, Catherine	02/18/2013 23:40	
Case Number: 2013-08510		
Type of Call: 415		
Victim:		
Date: 02-13-13	Officer at Scene: S-25 & S-31	Weather:
Location: 2116 Allston Way # 514	Time Arrived: 0105 hrs	Time Completed: 0142 hrs
Camera: Nikon D80 & Nikon D90		Number of Photos: 85
Video Camera: Sony DCR-SR82 HD	D video camera	'=
Latent Prints:	Elimination Prints:	GSR:
Evidence:	DNA/Swab:	Buccal:
Other:		

DATE / TIME WRITTEN

At approximately 0105 hrs I arrived at the above listed location, and spoke to Sergeant Ross # S-25 who was standing outside in front of 2116 Allston Way. Sergeant Ross directed me to Sergeant Cardoza # S-31 who was upstairs in unit # 514.

Upon arrival to unit # 514 I spoke to Sergeant Cardoza # S-31, Sergeant Cardoza advised me of the case and requested digital photos only of the interior of the above listed residence. Sergeant Cardoza directed my attention to the location of the mattress on the floor in the bathroom, various medications and a syringe. Sergeant Cardoza requested that I document the location of the mattress inside the bathroom, medications and the syringe.

Using a Nikon D90 digital camera I photographed the interior of 2116 Allston Way unit # 514. Officer Mathis # 80 stood by with me inside unit # 514 during the time I was inside taking photographs. The photos document:

Mattress located on floor inside bathroom

Small suitcase (open) containing medication and other miscellaneous items, sitting on top of a CD player which was sitting on a chair located in the living room

Five (5) prescription medications in the name of (located inside the above mentioned small suitcase)

Two (2) suitcases (one black & one floral) located on the floor in the living room next to the above mentioned chair

Syringe located on the table next to the bed in the bedroom

Six (6) prescription medications in the name of located on the TV stand in the bedroom

White coffee mug (wrapped in suspected saran wrap) located on the table next to the bed in the bedroom

Three (3) prescription medications in the name of Floyd Gains located on the wire shelf in the entry way hallway

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ON



BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 4 OF 4

REPORTING OFFICER

Jamison, Catherine

DATE / TIME WRITTEN 02/18/2013 23:40

A piece of paper taped to the bathroom mirror with the words "A BITCH AN'T SHIT" written on it

A piece of paper affixed to the wall in the living room in two different locations with the words "A BITCH AN'T SHIT" written on them

At approximately 0142 hrs I cleared the scene.

C. Jamison #452 CRIME SCENE UNIT



POLICE REPORT

2100 Martin Luther King Jr. Way

CASE NO. 2013-00008510

PEL	ici)	SU	IPPL	EME	ATA	L		rkeley, CA (510) 981-5							
											á				
NO.	SECTION - TYPE ATTEMPT / COMMIT COUNTY						COUNTS	MO FACTORS DI ACCELERANT USED OPEN FLAME			D IMPERSONATE POLICE LANI DITEL TA			RED	
1 2 F 3						~~~	ļ	☐ ALARM DIS	ABLED ED PROMI	FRONT -	DINTERRUPTE LOCK CHEA LOCK PUNCS LOCK PRY	D EURGLARY I	LU RESED C	LOCKOUT HEM AGENT PEPPER SPR 8 CLOTHER CUT (HPPED	
								APPROACH ASKED FOR BOUND GAS	CHANGE SOED HAN	DCUFFEB NED NEARBY	D HADE UNIQUE MAJE UNIQUE MAJE UNIQUE	e dewands Pace hidden	II WINDO	N GMASH BURGLARY	
								CLOSING OPENING TAME C) DEFECATED DEMAND NOTE USED			☐ HASTURBATED ☐ OPENLOCKED WINDOW DOOR ☐ CRALLY COPULATED ☐ 2USPEC			TAGD VICTIM AGD	
4								DOOR KICK	by Subpl FF		OTHER BEX / PHOME DISAL POWER DISAL PRY MANDOM	BLED	□ALCO		
5							☐ EMCULATED ☐ FIED WENFOR ☐ FOLORS STALKS VICTIM ☐ FORCED TO COVER FACE		CTIM	☐ PURSE SHATCH GOILE BAD TOOLS ☐ RAPED WITH FOREIGN OBJECT ☐ ROY		TOOLS	OUTIER PORCELAN		
6		4						☐ FORCED TO ☐ FORCED TO	FORCED TO DISTORE FORCED TO PONDLE SUSPECY FORCED TO PONDLE SUSPECY		GECURITY CAMERA REMOVED		BRICK	□BRICK/ROCK CHIPS □PLASHEIGHT □PRY TOOL	
7							GLASS OR PANEL REMOVED GLOVES WORM		MOVED	O SHOPLIFT GONE BAD STEERING COLUMN FRY STRUCK VICTEM WITH A MEAPON		KŒY/LO	GLASS CUTTER BAWIDALL GREYLOCKPICK SCREWBRIVE		
8								HATE MOTIVE HOTWIRE GRETTON PL			TAKEOVER	TIM WITH HAMDS FE	OTHER		
	NT OF ENTRY: METHOD: POR DISPOSE SMASHED FORCE DISPOSE SMASHED FO														
+==	AR - Arrested IP - Involved Party MP - Missing Party OP -									SU - Suspe	U	ctim WI-	Mitness		
NO.	INVOLVMENT	NAME (LAS	T,FIRST,MID	DLE,SUFFIX)						DATE OF BI	RTH AGE	RACE/SEX	HAIRIEYE	S HGT/WGT	
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2															
3											-				
4									-						
5	-														
6 UNI	IDENTIFIED SUB	ECTS													
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VICT VEH 2	DESCRIPTION	1												1	
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PORTING	officer a, Andrea					TE / TIME WRIT		:49	CRIM	E SCENE PER	RSONNEL	War en		***************************************	

		BERKELEY POLICE DEPARTMENT PROPERTY CONTROL			case no. 2013-00 0	008510 PAGE 2 OF
	orting officer ardoza, Andrea				DATE / TIME WRITTEN 2/12/2013 2:	3:49
		STOLEN/RECOVERED	K-SAFEKEEPING	E-EVIDENCE	L/ IL/LUIO L	<i>9.73</i>
	CODE QTY TYPE E 1 EACH Miscellar	anus	SERIAL #		VALUE	SPECIAL HANDLING
1	DESCRIPTION GLASS PIPE W/STEEL WOO					
-	CODE QTY TYPE Blood Bi		SERIAL #		VALUE	SPECIAL HANDLING
2	DESCRIPTION DNA BLOOD CARD	0.09100,				
-	CODE QTY TYPE E 1 EACH Miscellar	neous	SERIAL \$		VALUE	SPECIAL HANDLING
3	DESCRIPTION DECEDENTS PRINTS	10000				
4	CODE QTY TYPE E 1 EACH Miscellar	neous	SERIAL		VALUE	SPECIAL HANDLING
4	DESCRIPTION FINGERNAIL CLIPPINGS					
5	E 1 EACH Clothing		SERIAL #		VALUE	SPECIAL HANDLING
3	DESCRIPTION STRIPPED SHIRT					
6	E 1 EACH Miscellar	neous	SERIAL #		VALUE	SPECIAL HANDLING
	BLACK CORD					
7	E 1 EACH Miscellar	eous	SERIAL #		VALUE	SPECIAL HANDLING
a	DESCRIPTION BUTCHER PAPER					
8	E 1 EACH Miscellar	eous	SERIAL#		VALUE	SPECIAL HANDLING
	PLASTIC BAG					
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POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 3 OF 3

REPORTING	OFF	ICE	1	
Cardoz	a.	An	dr	ea

2/12/2013 23:49

BERKELEY POLICE DEPARTMENT EVIDENCE AND PHOTOGRAPHIC REPORT									
Case Number: 2013-08510									
Type of Call:									
Subject: Moore, Xavier	•								
Date: 02-26-2013	Officer at So	cene:	ene: Weather:						
Location: Alameda Cou	nty	Time Arrived: 1025h	ırs	Time Completed: 1106hrs					
Coroner's Bureau, Oakla	ind, CA								
Camera:			Nun	nber of Photos:					
Video Camera:									
Latent Prints:		Elimination Prints:		GSR:					
Evidence: Yes	\Swab:		Buccal:						
Other:									

I was notified by Sheriff's Technician Bender #285 of the Alameda County Coroners Bureau that evidence involved in this case was available for our collection.

At approximately 1025hrs I arrived at the above listed location and spoke with Technician Bender. The following evidence was collected via chain of custody:

- Stripped Shirt
- Black Cord

RR

- Butcher Paper
- Plastic Bag
- Glass pipe w/steel wool off of body
- DNA Blood Card
- Decedents Prints
- Fingernail Clippings

At approximately 1106hrs I cleared the scene. Upon arrival to the Berkeley Police Department Crime Scene Unit all evidence was booked into the secured Property Room under the above listed case number.

Prepared by,

A. CARDOZA #457



Case Report

Summary

Login ID:

Print Date/Time: 04/23/2013 11:48

phong Case Number:

2013-00008510

Berkeley Police Department

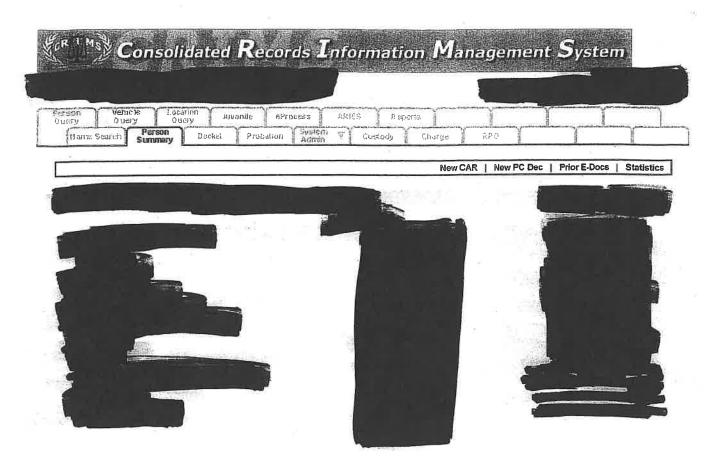
ORI Number:

CA0010300

Routing:

□ BERKELEY POLICE DEPARTMENT

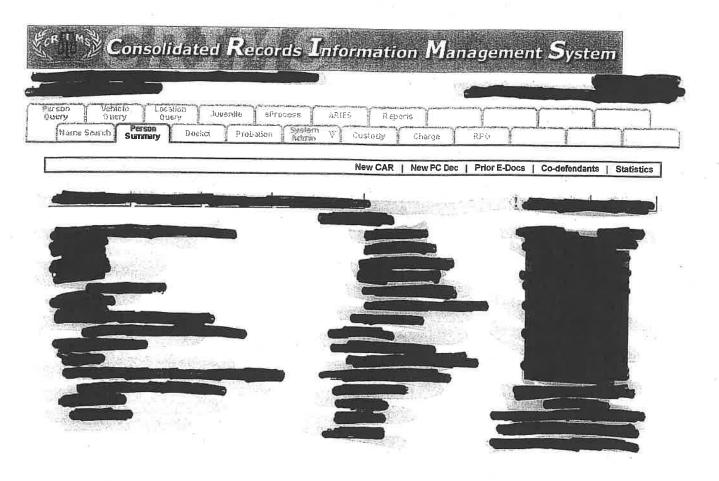
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ITD Help Desk Telephone: (510) 272-3744. ITD Help Desk E-Mail: itdhelpdesk@acgov.org-

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 1 OF

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BERKELEY POLICE DEPARTMENT PROPERTY CONTROL

CASE NO. 2013-00008510

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POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

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REPORTING OFFICER
Vargas, Cuauntemoc

DATE / TIME WRITTEN 02/16/2013 11:19:51

BERKELEY POLICE DEPA	RIMENT EVIDEN	ICE AND DIE	ALCO OF ABILIC PLDODA			
DLIGOLDE I COLORDET.	ICTIVALIATE DATE	ICE AND PHO	TOGRAPHIC REPORT			
Case Number: 13-08510):				
Type of Call: Autopsy						
Victim/Subject: Xavier Mod	re	_				
	icer at Scene: #S-27	7 V	Weather:			
Location: 480 4th ST	Time Arr	rived: 0900hrs				
Camera: Nikon D80 digital o	amera	I	Number of Photos: 145 photos			
Video Camera: Sony hand	cam DCR-SR82 d	ligital video c	amera			
Latent Prints: NO	Eliminati	ion Prints:	GSR: No			
Evidence: No	DNA/Swab: No	0	Buccal: No			
Other:						

At approximately 0900hrs I met with Homicide Sergeant Hong #S-27 at the location listed above. Sergeant Hong informed me of the case and requested general overview photos of the decease prior to the Autopsy.

Upon our arrival we met with the Pathologist Beaver, Thomas who informed us that from his visual inspection - no obvious signs of blunt trauma were noted on the decease. Pathologist Beaver Thomas did inform us that a suspected glass crack pipe was found on the decease.

I took photos of the suspected crack pipe recovered by the Alameda Sheriffs Corner office. I then took pre autopsy photos of the decease.

The Pathologist requested the following information prior to performing the autopsy - was there any weapons used (batons, tased, punches) and were any restraints used on the subject. Sergeant Hong informed the Pathologist that no weapons were used on the subject and that the subject was restrained with handcuffs and leg restraints.

The Pathologist first performed an examination of the hands and legs by making an incision on the skin in order to expose the epidermis and dermis in search for contusion or injuries not visible through the skin. The Pathologist informed us that no blunt trauma was noted on any of the above listed locations. He did inform us that a small round contusion was noted on the subject's left hand (posterior or back of hand).

The Pathologist then commenced the Autopsy and upon his completion he informed us that no external or internal injuries (Blunt trauma) were noted on the decease.

Using a Nikon D80 digital camera the following photos were taken:

- 1) photos of the decease Xavier Moore Black Male 04/17/71 approximate weight 347pounds. Note: decease had a medical plastic piece protruding out of his mouth and an outline of medical electrical pads on his chest and left side of stomach.
- a) anterior and posterior photos of the decease prior to the Autopsy.
- b) photos of the incisions made to both legs and both hands used to search for blunt trauma.



POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

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Vargas, Cuauhtemoc

DATE / TIME WRITTEN 02/16/2013 11:19:51

- c) photos of the Y incision performed on the decease.
- d) photos of the incision made on the left and right side of decease head.
- e) photos of the deceases skull showing no blunt trauma.
- f) photos of the circular contusion mark noted on the back of left hand.
- g) photos of the suspected glass crack pipe found on the decease by Alameda County Sheriffs Coroner's office. The crack pipe appeared to be approximately 2 ½ inches in length with some broken pieces as well.
- h) general photos of the decease face, hands, feet and front and back overview.

At approximately 1124hrs I cleared the scene and the photos were stored in the Crime Scene Unit digital photos database VeriPic. A copy of the photos was given to Sgt Hong for his investigation purposes.

Prepared by, CSO C. Vargas #430 Berkeley Police Department Crime Scene Unit 2100 Martin Luther King Berkeley CA 94704 1(510)981-5710 02/16/2013 1101hrs



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO.

2013-00008510



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CASE NO. BERKELEY POLICE DEPARTMENT 2 OF PROPERTY CONTROL 2013-00008510 6 DATE / TIME WRITTEN REPORTING OFFICER 02/13/2013 20:57:38 Vargas, Cuauhtemoc CODE: S-STOLEN E-EVIDENCE F-FOUND S/R-STOLEN/RECOVERED K-SAFEKEEPING SPECIAL HANDLING SERIAL # VALUE E 1 EACH Clothing DESCRIPTION Evidence #1 - leopard print fabric with a knot or tied in the center - brand of garment "H&M". SPECIAL HANDLING E 1 EACH Clothing DESCRIPTION Evidence #2 - leopard print fabric sleepwear brand "freeplay" one size. SPECIAL HANDLING VALUE E 1 EACH Miscellaneous DESCRIPTION Evidence #3 - small white straw. SERIAL # VALUE SPECIAL HANDLING E 1 EACH Miscellaneous Evidence #5 - prescricption box only "pro air HFA" and 5 blue instruction papers for Moore Xavier. SPECIAL HANDLING E 1 EACH Miscellaneous Evidence #6 - hypodermic needle with orange cap. VALUE. SPECIAL HANDLING SERIAL# E 1 EACH Miscellaneous Evidence #7- small brown box with elephant picture - containing four loose pilss, a pin and bobby pin. E 1 EACH Currency, Notes, etc. DESCRIPTION Evidence #7- two pennies VALUE SPECIAL HANDLING SERIAL # E 1 EACH Jewelry Precious Metals Evidence #7- silver metal hoop earring. VALUE SPECIAL HANDLING SERIAL# CODE QTY E 1 EACH DESCRIPTION Jewelry Precious Metals Evidence #7- yellow metal hoop earring. VALUE SPECIAL HANDLING SERIAL# Miscellaneous 10 Evidence #8 - white coffee cup with white residue and tissue inside of coffee cup. SPECIAL HANDLING E 1 EACH Miscellaneous 11 DESCRIPTION EVIDENCE #9 - Small brown box brand "US POLO ASSA" containing numerous small blue plastic items, yellow capsule E 1 EACH TYPE Jewelry Precious Metals 12 DESCRIPTION Evidence #9 - yellow metal link chain two pices. SPECIAL HANDLING SERIAL # E 1 EACH Miscellaneous 13 DESCRIPTION Evidence #10- small white plastic container brand "Johnson and Johnson" containing three small baggies appeared to SPECIAL HANDLIN CODE QTY E 1 EACH TYPE Miscellaneous 14 Evidence #11 - AT and T statement bill and north shore Agency letter. VALUE SPECIAL HANDLING TYPE Miscellaneous E 1 EACH 15 Evidence #12- black Remington travel case containing three blue gloves and a black shoe string SPECIAL HANDLING E 1 EACH Miscellaneous

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Evidence #13- black toiletry travel case with "SF" logo on the side containing a black wallet, glide personal lubricant

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POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013=00008510

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REPORTING OFFICER
Vargas, Cuauhtemoc

DATE / TIME WRITTEN

02/13/2013 20:57:38

BERKELEY POLICE	E DEPARTMENT	Γ EVIDENCE AND P	HOT	OGRAPHIC REPORT	
Case Number: 13-08	510				
Type of Call: Search	Warrant				
Victim/Subject:					
Date: 02/13/2013	Officer at Sc	Weather:			
Location: 2116 Allsto	on #514	Time Arrived: 1258	ırs	Time Completed: 1500hrs	
Camera: Sony DSC-	S2100 digital cam	nera	Number of Photos: 255 photos		
Video Camera: Son	y handy cam DC	CR-SR82 digital video	cam	era (7 video clips)	
Latent Prints: NO		Elimination Prints:		GSR: No	
Evidence: yes	nce: yes DNA/Swab: No			Buccal: No	
Other:				- N.	

At approximately 1258hrs I met with Homicide Sergeant Hong #S-27 as well as with Homicide Detective Johnson #26 and Homicide Detective Grant#29 at the location listed above. Sergeant Hong informed me of the case and requested pre and post video/photographs of the apartment#514 prior to conducting a search warrant of the premises.

I took pre photos and video of the one bedroom apartment. Upon my completion Homicide staff conducted their search warrant on the apartment. Upon their completion Sergeant Hong informed me of some items he wanted collected as evidence.

I immediately labeled each item on scene with evidence placards #1 through #13. I took photos and video of the evidence prior to collecting the items as evidence. Once I completed collecting the evidence I did my post video and photographs of the apartment.

Detective Grant secured the apartment prior to our departure from the scene.

Evidence: the following evidence was collected using the following sterile equipment - gloves, brown paper bags and manila envelopes.

- 1) Leopard print fabric with a knot or tied in the center brand of garment "H&M.
- Located inside 2116 Allston #514 on the north east kitchen corner lying on the carpet floor.
- 2) Leopard print fabric sleepwear brand "Free Play" one size. Located inside 2116 Allston #514 on the kitchen chair.
- 3) small white straw located inside a cardboard box the box was located in the middle of the kitchen floor of 2116 Allston #514.
- 4) small clear baggie containing green leafy substance (suspected marijuana) located inside a cardboard box the box was located in the middle of the kitchen floor of 2116 Allston #514.

BERKELEY POLICE DEPARTMENT PROPERTY CONTROL

CASE NO.

2013-00008510

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

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Vargas, Cuauhtemoc

DATE / TIME WRITTEN 02/13/2013 20:57:38

Note: Detective Johnson #26 collected it as evidence, I only took photos of evidence #4.

- 5) a cardboard prescription box only and five blue instruction papers for Moore Xavier the items were located inside a purse that was also located inside the cardboard box that was located in the kitchen floor of 2116 Allston #514.
- 6) Hypodermic needle with orange cap located on the night stand are located in the single bedroom room of 2116 Allston #514.
- 7) small brown box with a picture of an elephant located on the exterior top of box. The box contained two pennies, one yellow metal hoop earring, one silver metal hoop earring, seiu pin, two metal bobby pins and four loose pills.
- 8) White coffee cup containing unknown white residue and tissue located on the bedroom nightstand. The top of the coffee cup appeared to have been wrapped with clear plastic. The nightstand was located in the single bedroom room of 2116 Allston #514.
- 9) small brown box brand "US POLO ASSA" containing numerous small blue plastic items, yellow capsule style pills (G5027), metal key, one touch ultra x two containers and a two piece yellow metal chain link.
- 10) small white plastic container brand Johnson and Johnson containing three small empty baggies and two small metal objects and a booby pin. This item was located on the single bedroom nightstand of 2116 Allston#514.
- 11) AT and T statement bill and North Shore Agency letter. The items were located in the single bedroom of 2116 Allston #514.
- 12) Black Remington travel case containing three blue plastic gloves and a black shoe string. The item was located inside the TV entertainment center located in the single bedroom room of 2116 Allston #514
- 13) black to iletry travel case with SF logo on the side containing a black wallet with no money just misc cards (bart ticket, muni pass and super 8 motel cards), glide personal lubricant x 2, alcohol prep pad x6, secret deodorant, small round tin cans, blue sterile water plastic capsules and a silver metal ring.

Sony handy cam DCR-SR82 digital video camera (7 video clips):

1) pre and post search video of 2216 Allston #514. The apartment consisted of a single bedroom, single bath and an open shared room for the kitchen / dining room and living room. Video also shows evidence labeled # 1 through #13 prior to collecting as evidence from the scene.

Video clip #1 - 4 seconds

Video clip #2 - 12min 09secconds

Video clip #3 - 2min 48seconds

Video clip #4 - 4seconds

Video clip #5 - 2min 44 seconds

Video clip #6 - 2min 11 seconds

Video clip #7 - 4 seconds

Using a Nikon D80 digital camera the following photos were taken:

1) photos of 2116 Allston #514 - search warrant

a) pre and post photos of the apartment that consisted of a single bedroom, single bath and an open shared room for the kitchen / dining room and living room.



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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL

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REPORTING OFFICER

Vargas, Cuauhtemoc

DATE / TIME WRITTEN 02/13/2013 20:57:38

Note: during my pre photographs and video I noticed a single mattress and what appeared to be a vacuum on the bedroom floor. The bathroom was very cluttered and a written sign that read "A BITCH AINT SHIT" tapped on the bathroom mirror. Two other similar signs were noted in the Kitchen/living room as well. The interior of the bedroom and kitchen/living room/dining room appeared to be cluttered.

b) Photos of the evidence #1 through #13 listed above in the evidence list.

c) photos of the evidence #1 through #13 photographed in the Berkeley Police Department Crime Scene Unit Lab.

Note: evidence was inspected and photographed prior to properly (jewelry and currency) booking into the Berkeley Police Department property room.

d) photos of the exterior of apartment #514 capturing the front door and pedestrian walkway.

At approximately 1500hrs I cleared the scene and the photos and video were stored in the Crime Scene Unit digital photos/video database VeriPic. The evidence was properly packaged, sealed and booked into the Berkeley Police Department on 02/13/2013 at approximately 2200hrs.

Prepared by, CSO C. Vargas #430 Berkeley Police Department Crime Scene Unit 2100 Martin Luther King Berkeley CA 94704 1(510)981-5710 02/20/2013 1001hrs



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO.

2013-00008510

PAGE 1 OF

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		n, Shan				02/14/201		:31:21					Care Stine 30	13-1000195/01 2-256

CASE NO.

PAGE

PROPERTY CONTROL 2013-00008510

DATE / TIME WRITTEN REPORTING OFFICER 02/14/2013 11:31:21 Johnson, Shan CODE: S-STOLEN F-FOUND S/R-STOLEN/RECOVERED K-SAFEKEEPING E-EVIDENCE TYPE Drugs (Marijuana) SERIAL # VALUE SPECIAL HANDLING SF 1 EACH DESCRIPTION
MARIJUANA- One stamp-sized ziploc baggie containing a green leafy substance.

| Type | | Serial # SPECIAL HANDLING VALUE DESCRIPTION SPECIAL HANDLING SERIAL # VALUE CODE | QTY 3 DESCRIPTION SPECIAL HANDLING VALUE TYPE SERIAL # CODE | QTY 4 DESCRIPTION SPECIAL HANDLING CODE QTY SERIAL # VALUE 5 DESCRIPTION SPECIAL HANDLING VALUE SERIAL # TYPE CODE | QTY 6 DESCRIPTION SPECIAL HANDLING VALUE CODE | QTY TYPE SERIAL # 7 DESCRIPTION VALUE SPECIAL HANDLING TYPE SERIAL # CODE | QTY 8 DESCRIPTION SPECIAL HANDLING VALUE SERIAL # CODE QTY 9 DESCRIPTION SPECIAL HANDLING SERIAL# VALUE CODE QTY TYPE 10 DESCRIPTION VALUE SPECIAL HANDLING CODE | QTY TYPE SERIAL# DESCRIPTION TYPE SERIAL # VALUE SPECIAL HANDLING CODE QTY 12 DESCRIPTION SPECIAL HANDLING SERIAL # VALUE TYPE CODE QTY 13 DESCRIPTION VALUE SPECIAL HANDLING TYPE SERIAL # CODE QTY DESCRIPTION SPECIAL HANDLING CODE QTY TYPE SERIAL# VALUE 15 DESCRIPTION VALUE SPECIAL HANDLING CODE | QTY TYPE SERIAL# 16 DESCRIPTION **FIREARMS** VALUE MODEL SERIAL# FINISH MAKE DESCRIPTION FINISH VALUE SERIAL # MODEL MAKE 2 DESCRIPTION VALUE SERIAL # FINISH MODEL MAKE

DESCRIPTION

NARRATIVE

BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-00008510

PAGE 3 OF

REPORTING OFF	CER
Johnson,	Shan

DATE / TIME WRITTEN 02/14/2013 11:31:21

On 2/13/13, at about 1315 hours, I collected the suspected marijuana during a search warrant at 2116 Alston Way #514.

1 - 1 LE

BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 1 OF

-	NO.	O. SECTION - TYPE			1/	ATTE	TTEMPT / COMMIT	COUNTS MO FACTO		s			D IMPERSONATE POLICE LAW			2	D TILL TAP TORTURED		
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Gra	ınt, .	Jesse					02/19/2013	22:	:47:30							transferon	***************************************		

	7	BERKELEY POLICE DEPARTME INVOLVED SUBJECTS 1 - 6	CASE NO. 2013-	00008510 PAGE 2 OF 5
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				BUSINESS PHONE
	EMPLOYER / SCHOOL ADDRESS			



POLICE REPORT 2100 Martin Luthe Berkeley, O

SUPPLEMENTAL

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 2013-0008510

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Grant, Jesse

DATE / TIME WRITTEN 02/19/2013 22:47:30

SUPPLEMENTAL:

On 2/13/13 at 0600 Sgt. Hong called me and advised me of this incident.

On 2/13/13 at 0730 I went to Communications and obtained a copy of the CAD purge for this call. I spoke with Supervisor Reeves and obtained a copy of the 911 call and the patrol channel traffic.

I listened to the phone call placed by RP Hayes to the Berkeley Police Department. At 2349 Berkeley Police Communications Center received a call from a John Hayes, Hayes stated in the call that his "roommate" was "acting a fool" and needed to be "brought into the psych ward". Hayes stated that his roommate should be taking medication, "but hasn't for a long time." Hayes told the dispatcher his roommate is Xavier Moore a black male who is forty-three years old. Hayes says he is on the lease of the apartment and his roommate put him out for "no reason". Hayes stated there were no weapons in the house but there are kitchen knives and Hayes has been known to pick up kitchen knives and threaten to use them. Hayes told the dispatcher that Moore is diagnosed with Schizoaffective disorder. Refer to the call for further detail.

On 2/13/13 at 0930 I spoke with San Francisco Police Department Warrants Supervisor Kam Eng. Eng was able to locate a 242 P.C. warrant for Xavier Moore with a date of birth of 4/17/52 and CDL number of This warrant stems from SFPD case number 100547712 which occurred in 2010. The warrant number is 720035. She also stated an alias on file for Moore is Elamin Mustafa. Of note is the fact that Elysse Moore, step-mother to Xavier Moore, has her year of birth listed on Officer Frankel's report (12-48251) as 1952.

At 1035 I received a call from Elysse Moore the step-mother of Xavier Moore. Elysse Moore told me Moore is forty one years old, over 400 lbs and is diagnosed paranoid schizophrenic, Moore told me prior to going on tape that she had spoke to the ABH ER doctor and he had told her information about this incident. She learned Moore had been doing Methamphetamine and when the paramedics arrived he had not pulse. Paramedics tried CPR but he was pronounced dead at Alta Bates Hospital. She told me John Hayes, alias Shaborn Parra, with a phone number of has been residing illegally at Moore's apartment. She says Hayes is a known drug dealer. She has concern about their safety relative to Hayes. She believes Hayes is "pivotal in all this". Elysse stated she and her husband have not been able to go to Moore's apartment over the last two months. With Hayes arrival in Moore's apartment Moore's parents were pushed out. Up until this point Moore's father checked on and cared for Moore on a daily basis. She also explained Moore stayed with her and her husband over the summer and over this time she developed an "intimate" relationship with Berkeley Mental Health and with her Berkeley beat officers, "they just became part of our family". Over this time she said Moore was 5150'd several times due to his Schizophrenia. She believes Hayes began taking Moore's social security checks. She knows the difference between Moore having delusions and when he just does not know what happened to his money. Moore had delusions and "many voices in his head". Hayes and Moore had a "domestic violence type of situation". She stated they have been in a romantic relationship but now they just use each other and have "the common bond of drugs" and "do the routine with the social service agencies where my son is the caretaker to Shaborn (Hayes) so he gets a little check of two hundred



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REPORTING OFFICER
Grant, Jesse

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DATE / TIME WRITTEN

02/19/2013 22:47:30

dollars a month for that. You know defrauding the government". She clarified that it was the ER doctor who told her Moore was doing Methamphetamine. Moore does do many drugs and specifically like crack cocaine. She has not been able to get him to take medications. He drinks gin and vodka. Hayes supposedly had/has a girlfriend named "Penny" who was in and out of the apartment. She does not know if "Penny" is transgender or not. Another person she knows of is "Sterling". No one was formally set up as Moore's caregiver. His only caregiver's are his parents. The courts have deemed Moore competent. He has only taken medication while hospitalized and for a few days after. Moore has smoked crack cocaine in front of his father. Her complete info is Elysse Paige-Moore 52, Refer to this recorded call for detail.

I wrote a search warrant for Moore's apartment. I brought the warrant to the Honorable Alameda County Superior Court judge Northridge. Judge Northridge reviewed and signed the warrant at 1220.

Sgt. Hong, Officer Johnson and I went to 2116 Allston Way Apartment 514 and served the warrant at 1300. I stood by and provided scene security for ID Tech Vargas. When ID Tech Vargas was done I stood by until the senior property manager came and locked the door at 1515. While at the scene told me he had complaints from Moore's neighbors because Moore would knock on resident's doors and try to sell them marijuana cigarettes. The lead also had at least one conversation in which Moore acknowledged he was allowing another man whom he called "Peter" live with him in violation of his lease. The lead maintenance worker told me they had dealt with issues relating to Moore. I told them I would contact them for further information.

At 1615 I faxed a request to SFPD Records for their case number 100547712.

At 1830 I called	work address 1916 Oxford in Berkeley,
provided a recorded statement.	told me he was assigned a work order in January of
2013 to unclog a drain in Moore's apartment	went and knocked on Moore's door. Moore came
	foil in the other hand. came into the apartment and
•	working Moore and another unidentified man were behind the
sliding door to his bed area.	ld tell they were smoking. When stated he was
1	smoke came from Moore's side of the partition. Moore was
holding a straw in one hand and a lighter in the	he other. associated these items and the ones Moore
	also stated he saw a Methamphetamine pipe in a
partially open drawer by the sink while he wa	as unclogging the drain. Refer to see see see see see see see see see se
statement for detail.	

I placed a call to but his phone went straight to voicemail.

At 2010 I called Moore's step-mother Elysse Moore. She told me it is her understanding that Xavier Moore gets tested regularly for HIV and Hepatitis. Moore got most of his medical treatment at the Tom Waddell



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Berkeley, CA 94704
(510) 981-5900

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Grant, Jesse

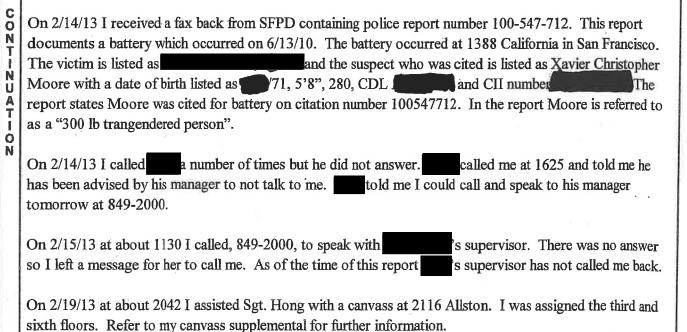
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DATE / TIME WRITTEN 02/19/2013 22:47:30

(formerly Height Ashbury Clinic) Clinic in San Francisco. This clinic has a unit which specializes in working with transgender patients. Moore was getting hormone shots from the clinic. Moore had also had "panels" done at Herrick Hospital. She knew Moore to have high blood pressure for several years and he was not taking medication for it. Moore recently spent time at the John George detox facility. He has obtained emergency medication in the past from Sausal Creek. She told me Moore had trouble walking after he fell trying to climb into a second story window about twenty years ago. In this incident Moore broke all the bones in both feet. Over the years Moore has had a number of different STDs. When Moore was four years old he was hit by a car while riding a bike and he suffered a closed head injury. He spent several days in a coma. After the vehicle collision Moore developed anger impulse issues. Refer to her recorded statement for detail.

Elysse Moore called back several minutes after the above call was completed. She asked how this incident had come about and she asked if there had been a struggle. I told her there was a call for service at Moore's apartment and once officers contacted Moore they observed he was agitated and became violent. At some point after Moore had been subdued he stopped breathing and officers performed CPR on Moore until paramedics arrived. She asked about the whereabouts of Hayes and if the police had contacted him. I told her Hayes had been spoken to. I told her I did not know Hayes' whereabouts. She asked what I recommended if she were to go to her son's apartment and were to encounter Hayes. I told her she could have the police stand by while she conducted her business.



M92000103DSDM

00001122

DLEWX AWS PROD (Q,P)

03/05/13 16:51

AWS: INOUIRY LIST

REQUEST PARMS: WAME/MOORE, MAVIER 04/17/1952 3 M

STK/SEQ OPTIONS: HELP MORE WASHEET REQV VRIV DILIG STATUS EXTD

RECORD COUNT: 1

F 1 ACTIVE MISDEM BW WEE:720035 RESP:03801 CRT:38460 DOW:07272010 MOORE, MAVIER CHRISTOFHER DOE:04/17/1952

AKA:

SRHE:M B

BAI:10,000.00 VIO:PC 242

1388 CALIFORNIA ST
GRW PRANCISCO, CA CRF #2453494 D14 *CONTACT RESP AGCY*

MSG: REQUEST SENT TO CLETS

##END: ALL AWS RESPONSES SENT # F

PAGES 55-62 WITHHELD

San Francisco Police Department Report #100547712 Please Contact S.F.P.D for Access

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BERKELEY POLICE DEPARTMENT

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Hong, Peter

DATE / TIME WRITTEN

02/20/2013 15:29:15

APARTMENT NEIGHBORHOOD CANVAS

On 02-19-13 at about 2040 hrs, Officers Grant, P. Lee and I began contacting available residents at 2116 Allston Way (Gaia Building).

Unit did not hear or see anything prior to police arrival. It is also looked out and saw 5-6 police officers going in and out of the apartment. Otherwise, did not see or hear anything noteworthy. It is also had no previous interaction with Moore.

Unit — Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit the saw police cars on Allston Street on the date/time of incident. Otherwise, and did not see or hear anything noteworthy. The had no previous interaction with Moore.

Unit — Resident was asleep. Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit —— Resident didn't see or hear anything on the date/time of incident. Resident had no previous interaction with Moore.

Unit - No answer.

Unit - No answer.

Unit - No answer.

Unit didn't see or hear anything on the date/time of incident. However, had previous contacts with Moore. described Moore ("Big African lady) as "tweaking out all the time," "going around asking for cigarettes," and often "talking to [her]self."

Unit - No answer.

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BERKELEY POLICE DEPARTMENT

POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-0008510

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100000	PORTING DEFICER DING, Peter	DATE / TIME WRITTEN 02/20/2013 15:29:15
		thing on the date/time of incident.
	Unit No answer.	
	Unit - No answer.	
	Unit No answer.	
	Unit who lives directly to Moore kept a postal package for unit	o the west of 514 had one contact with the "overweight black lady."
NARRATI	midnight heard a "fight going on" a "get off me," "you're hurting me," and "do Moore's. On five previous occasions in the	e last five months or so, Moore has offered to sell "speed" speed ou need a hook up for speed, I have some." described
VE CORTINU	date/time of incident. Numerous police of	different men and "random" people. described Moore as
AT-OZ		thing on the date/time of incident. described Moore as sking to borrow a cell phone and cigarettes.
	Unit No answer.	
	Unit Resident didn't hear or see anyth with Moore.	ing on the date/time of incident. Resident had no previous contact
	Unit No answer.	
	out. described Moore as "weird" and "s	and a "loud wail" on the date/time of incident but didn't look spacey." Moore often came knocking asking for a cigarette or to that Moore was often "under the influence."
	Unit - No answer.	



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Hong, Peter

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O N DATE / TIME WRITTEN

02/20/2013 15:29:15

Unit 505 - No answer.

Unit 504 - Resident did not see or hear anything on date/time of incident.

Unit 503 - Resident (unidentified) heard "a lot of screaming from inside" apartment 514 on the date/time of incident. Otherwise, resident didn't see or hear anything else noteworthy. Resident had previous contacts with Moore. Moore often knocked on resident's door asking for cigarettes. On one occasion Moore tried to sell the resident something that was "leafy" in a clear plastic bag. Resident does not know what marijuana looks or smells like.

Unit 501 - Resident did not see or hear anything on the date/time of incident. Resident had no previous contact with Moore.

Unit 710 - Paul Donovan didn't see or hear anything on the date/time of incident. Donovan had previous contacts with Moore; known to Donovan as "Kayla." Donovan described Moore as being "sketchy" and always being "high" and "never all there."

Unit 711 - Resident didn't see or hear anything on the date/time of incident. Resident had no previous contact with Moore.



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No answer

BERKELEY POLICE DEPARTM

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900

2013-00008510

DATE / TIME WRITTEN

02/20/2013 08:57:25

SUPPLEMENTAL:

APARTMENT NEIGHBORHOOD CANVASS

On 2-19-13 Sgt. Hong requested for my assistance to do a canvass at 2116 Allston Way. Sgt. Hong instructed me to attempt to contact residents on the 2nd and 7th floor of the apartment complex. We arrived and started knocking on resident's doors at approximately 2042 hours.

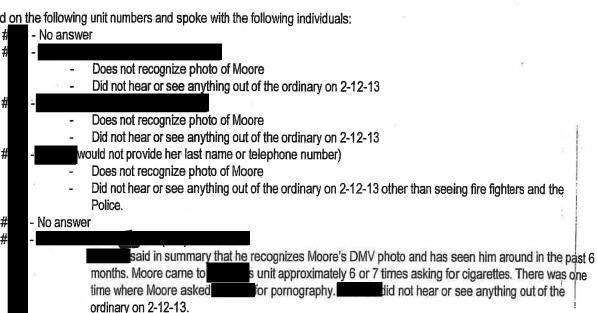
I asked the individuals I contacted the following questions:

POLICE REPORT

SUPPLEMENTAL

- Do you know an individual by the name of Xavier Moore? (no one I spoke with knew the name) 1)
- Do you recognize this individual? (as I show them a DMV photo of Xavier Moore, 2)
- 3) What kind of encounters have you had with him?
- 4) Did you hear or see anything out of the ordinary on 2-12-13 at approximately 11:45 PM?

I knocked on the following unit numbers and spoke with the following individuals:



said in summary that he recognizes Moore's DMV photo and has seen him around. Moore appears to be mentally ill because of the way Moore carries himself. Moore seems "off" because of Moore's "physical behavior" and it's similar to how someone would act if they're on medication. Bustamante also said that Moore seemed "spaced out." Bustamante did not hear or see anything out of

the ordinary on 2-12-13.

- Does not recognize photo of Moore
- Did not hear or see anything gout of the ordinary on 2-12-13.

aid in summary that she recognizes Moore's DMV photo and has seen him around. described Moore as an "odd person" because of the way Moore "carries himself" and that he is an always got a "weird vibe" from him. said that she thinks on 2-12-13 at the approximate time of 11:45 PM she heard screaming somewhere on the floors above her and then a



POLICE REPORT

2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE OF

	FUNCI	SUPPLEMENTAL (510) 981-5900
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	#######################################	crashing sound as if something fell from the top floor. No answer No answer (refused to open the door) Does not recognize photo of Moore Did not hear or see anything gout of the ordinary on 2-12-13. Does not recognize photo of Moore Did not hear or see anything gout of the ordinary on 2-12-13. No answer No answer
NARRATIVE CONTINUATION	# # # # # # # # # # # # # # # # # # # #	said in summary that he recognizes Moore's DMV photo and has seen him around approximately 10 times. said that Moore was always waiting to be let into the building. Moore was "different." said in summary that he recognizes Moore's DMV photo and has had approximately 5 to 6 encounters with him. Moore "always asked for cigarettes." said that Moore "always seemed a little off." He also said that he "thought there was a drug thing going on." refused to give telephone number) Does not recognize photo of Moore Did not hear or see anything gout of the ordinary on 2-12-13. Does not recognize photo of Moore Did not hear or see anything gout of the ordinary on 2-12-13. said in summary that he recognizes Moore's photo and has approximately 4 encounters with him. said that Moore seemed to be on drugs and that Moore seemed "off." said in summary that he recognizes Moore's photo and has approximately 4 encounters with him. said that Moore seemed to be on drugs and that Moore seemed "off." said that Moore seemed to be ond rugs and that Moore seemed "off." said that Moore seemed to be ond rugs and that Moore seemed "off." said that Moore asked if sold Speed when they were riding in the elevator.
	#'	said in summary that she recognizes Moore's photo and that Moore has offered her drugs before. said that she "wouldn't be surprised if Moore was mentally unstable." She also said that Moore was "super friendly", but a person that she wouldn't "instinctively trust." did not hear or see anything out of the ordinary on 2-12-13.



POLICE REPORT SUPPLEMENTAL 2100 Martin Luther King Jr. Way Berkeley, CA 94704 (510) 981-5900 CASE NO. 2013-00008510

PAGE 1 OF

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2100 Martin Luther King, Jr. Way, Berkeley, CA 94704
TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744
EMAIL: police@cityofberkeley.info

Case # 2013-00008510

CASE REPORT SUPPLEMENTAL

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BERKELEY POLICE DEPARTMENT

2100 Martin Luther King, Jr. Way, Berkeley, CA 94704 TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744 EMAIL: police@cityofberkeley.info

Case # 2013-00008510

PROPERTY / EVIDENCE **CONTINUED**

BPD-106 (rev 03-29-2015) PROPERTY / EVIDENCE | CODE: D-DAMAGED, DE-DESTRUCTION, E-EVIDENCE, F-FOUND, R-ERCOVERED, K-SAFEKEEPING, SF-SEARCH WAR FEL. SN-SEARCH WAR MISD.

CODE | QUANTITY | UNIT OF MEASURE | PROPERTY TYPE | SERIAL NUMBER EACH Digital Audio \$.,1 E 2 CD Xavier Moore's 911 Call on 01/11/13 QUANTITY UNIT OF MEASURE SERIAL NUMBER PROPERTY TYPE EACH Digital Video \$,,1 E DVD Video Interview of John Hayes 5 QUANTITY FUNIT OF MEASURE PROPERTY TYPE BERIAL NUMBER EACH Office Equipment \$,,1 E Flash Drive - Gaia Building Surveillance Video QUANTITY UNIT OF MEASURE SERIAL NUMBER VALUE CODE EACH Digital Audio \$,,1 E DESCRIPTION CD - Hayes' 911 Call (and) BPD Police-1 Radio QUANTITY UNIT OF MEASURE SERIAL NUMBER DESCRIPTION VALUE QUANTITY UNIT OF MEASURE PROPERTY TYPE SERIAL NUMBER 2 QUANTITY UNIT OF MEASURE ROPERTY TYPE SERIAL NUMBER VALUE DESCRIPTION QUANTITY JUNET OF MEASURE PROPERTY TYPE STRIAL NUMBER VALUE DESCRIPTION QUANTITY CITTOF MEASURE PROPERTY TYPE SERIAL NUMBER VALUE DESCRIPTION SERIAL NUMBER VALUE CODE QUANTITY UNIT OF MEASURE DESCRIPTION SERIAL NUMBER VALUE QUANTITY UNIT OF MEASURE PROPERTY TYPE DESCRIPTION SERIAL NUMBER VALUE QUANTITY UNIT OF MEASURE PROPERTY TYPE FALATE ROPERTY TYPE SERIAL NUMBER DESCRIPTION SERIAL NUMBER QUANTITY UNIT OF MEASURE CODE PROPERTY TYPE DESCRIPTION SERIAL NUMBER QUANTITY UNIT OF MEASURE PROPERTY TYPE ROPERTY TYPE SERIAL NUMBER DESCRIPTION 13 DATE / TIME WRITTEN 04/23/2013 11:22:10 Hong, Peter 4/26/2013 11:24 2 Hong, Peter #S27 of 3

2100 Martin Luther King, Jr. Way, Berkeley, CA 94704 TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744 EMAIL: police@cityofberkeley.info



REPORT NARRATIVE

NARRATIVE

The follow-up investigation by the Homicide unit is attached to this supplemental report in pdf form.

The Alameda County Coroner's report is attached to this supplemental report in pdf form.

Xavier Moore's CII Criminal History is attached to this supplemental report in pdf form.

The search warrants ordered by the Superior Court is attached to this supplemental report in pdf form.

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Hong, Peter #S27

04/23/2013 11:22:10 Hong, Peter

4/26/2013

3 of 3 Sergeant P. Hong/Homicide Case Report No. 13-08510

Incident Date/Time: 02-12-13, 2349 hrs

Incident Location: 2116 Allston Way #514, Berkeley

Coroner's Report No. 2013-00538

February 13, 2013

About 0600 hrs, I received a telephone call from Lt. Rolleri informing me that there was an incustody death involving officers of the Patrol Operations Division.

I called Officers Johnson and Grant of the Homicide Unit.

I arrived at the station at about 0700 hrs. Officer Johnson and Grant had already arrived.

About 0730 hrs, Officer Grant obtained the Computer Aided Dispatch (CAD) purge for this incident. Officers Grant, Johnson, and I (hereafter referred to as "we") began a review of the CAD details of the incident.

The CAD details showed the following information: A 911-Emergency call via a Metro PCS cellular phone (from 2150 Shattuck Ave, Berkeley. The incident "call type" was categorized as a "415" and designated a priority two response. The location of incident was "2116 ALLSTON WAY, Qualifier 514, Venue: Berkeley". "RESP: EJAVIER MOORE, BM, 43, LSW / SARONG TPE WRAP INSIDE THE BLDG." The reporting party was "HAYES, JOHN." Further details included "NO KNOWN WEAPONS APT DOES HAVE KTCHEN KNIVES / SCHIZOPHRENIC OFF MEDS AND DRINKING ALCOHOL / RP WILL BE IFO THE BLDG / RESP IS THE RP'SOOMATE." Nature of Call: "5150 & 647F ALCOHOL." "PE MEDICAL & 10-42."

About 0735 hrs, I called the Alameda County Central Dispatch to notify the on-call District Attorney's Office investigative call-out team.

About 0750 hrs, I requested – via the patrol sergeants office (Sgt. Phillips) – an officer be sent to secure the incident location to prevent entry-exit into Xavier Moore's apartment.

About 0806 hrs, I received a call from Deputy District Attorney Dalporto. I gave Dalporto a summary brief of the in-custody death incident.

About 0833 hrs, Dalporto advised the District Attorney's Office would not be sending an investigative team.

About 0835 hrs, the Alameda County Coroner's Office advised the autopsy of Xavier Moore would take place on 02-14-13 at about 0930 hrs.

At about 0840 hrs, Sergeant Phillips, the secondary supervising officer on scene, gave us a briefing of the incident. Officer Brown and Tu were dispatched to 2116 Allston Way for a report of a disturbance. At some point in time, Officer Brown made a radio broadcast requesting emergency assistance. Xavier Moore refused to be arrested for a \$10,000 warrant. Officers were engaged in a physical struggle with Moore. Moore was eventually handcuffed and his ankles bound with the Wrap device leg strap. At some point in time, Moore had labored breathing and subsequently stopped breathing. Officers conducted CPR as the paramedics were summoned. Moore was transported to the hospital (Alta Bates) where he was pronounced dead at 0134 hrs.

We listened to the 911 call made by the reporting party (John Hayes) as well as the Berkeley Police main patrol channel. In summary, Hayes stated his "roommate" was "acting a fool" and needed to be taken to the "psych ward." "Xavier Moore" who is "Schizoaffective" hasn't taken his medication for a "long time." There are no weapons in the home other than kitchen knives; however, Xavier has been known to use these knives in a threatening manner.

The following radio broadcasts were made during the incident (time designation based on the Enhanced Courier system):

02/12/13

23:54 Radio dispatch on police channel

23:57 3A4 (Ofc Brown) arrived on scene

23:58 4A3/4A5 (Ofcs Tu and Smith) arrived on scene

02/13/13

00:29 "Additional cover" request via radio broadcast made by Ofc Brown

00:32 Request for a "Wrap" via radio broadcast made by Ofc Katmiler

00:33 Wrap on scene broadcast by Sgt Cardoza

00:33 Request for spit mask made by Sgt Phillips

00:34 "Code-3 gurney... wrap not sufficient" radio broadcast by Sgt Phillips

00:35 "Code-4, Code-34" broadcast by Sgt Phillips

00:39 "Medical Code-3... trouble breathing" radio broadcast by Sgt Phillips

00:41 "Subject not breathing, starting CPR" radio broadcast by Sgt Phillips

00:54 Request for Crime Scene Tech radio broadcast by Sgt Cardoza

00:58 Hayes is transported to jail for warrant by Ofc Kaplan

01:07 Ofc Tu en route to Alta Bates with ambulance

(Moore was pronounced dead at 01:34 hrs by Alta Bates Hospital)

About 1106 hrs, Officer Johnson and I interviewed John Hayes. (Interview Room-C / video and audio recorded). The following is summary of the interview.

John Hayes has been living with Xavier Moore for a "couple months" at 2116 Allston Way #514, Berkeley. Hayes and Moore were formerly in a dating relationship. In the past, they lived together in San Francisco for a period of time.

On 02-12-13 between the hours of 1700-1800 hrs, Hayes returned home to find Moore and "Angel" in the apartment. "Angel" is Moore's "girlfriend." Moore demanded Hayes give him money for alcohol and more "speed" (Methamphetamine). When Hayes refused to give Moore money, Moore yelled for Hayes to get out and to move out. Moore demanded more "speed" from "Angel." When "Angel" said she didn't have any more, Moor ordered "Angel" to leave as well. Hayes described Moore as being "violent" and "threatening." Hayes left the apartment.

Later, Hayes returned to the apartment. Hayes found Moore and Edward Sterling in the apartment. Sterling is Hayes' friend. Sterling has been acting as Moore's "caregiver." Moore was yelling and demand more "speed" and alcohol. Moore was pacing back and forth into the bedroom and living room. Moore was talking fast, chain-smoking, and Hayes described Moore's behavior as "unusual." Moore was on "3-4 day" binge on "speed" and alcohol.

Hayes said Moore was "violent" and "aggressive." Moore's prior drug binges have "never" been violent. Hayes described this episode as "different" and "very unusual." Furthermore, Hayes said Moore had mental health issues; "psycho-affective" and not taking his medication for a long time.

Hayes left the apartment and called 911. Hayes told the 911-Operator that Moore needed to be "5150'd." Hayes led the responding officers to the apartment and unlocked the door for them. Hayes remembered the officers talking to Moore at the door. Hayes was taken to jail for his warrant by one of the officers. Hayes did not witness what occurred inside the apartment.

About 0930 hrs, Officer Grant contacted the SFPD warrant bureau and confirmed Xavier Moore did in fact have an active \$10,000 misdemeanor warrant for his arrest for PC 242 (Case No. 100547712/Warrant No. 720035). The CLETS/AWS system, however, had the wrong birth year inputted (04-17-52). Officer Grant also obtained the crime report associated with the warrant.

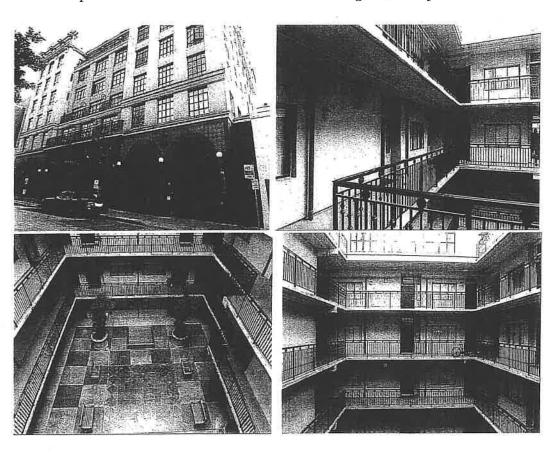
About 1035 hrs, Officer Grant took a call from Elysse Moore (step-mother to Xavier Moore). Moore was aware of her son's death and the general circumstances surrounding his death. Moore confirmed Xavier was a diagnosed paranoid schizophrenic. Moore confirmed Xavier and the family have had numerous prior contacts with Berkeley mental health and the Berkeley police. Xavier suffered from delusions and heard "voices in his head." Xavier has not been taking his medication. Xavier abused drugs; specifically crack cocaine and methamphetamine. Xavier drinks gin and vodka.

Officer Grant obtained a search warrant for 2116 Allston Way #514, Berkeley. On 02-13-13 at about 1220 hrs, the warrant was granted by the Honorable Judge Y. Northridge of the Superior Court, County of Alameda, State of California.

About 1300 hrs, Officers Johnson, Grant and I (Homicide), along with Sergeants Hawk and Smith (Internal Affairs) executed the warrant. The warrant was shown to the apartment management company representatives. The door was unlocked for us by a property management staff member

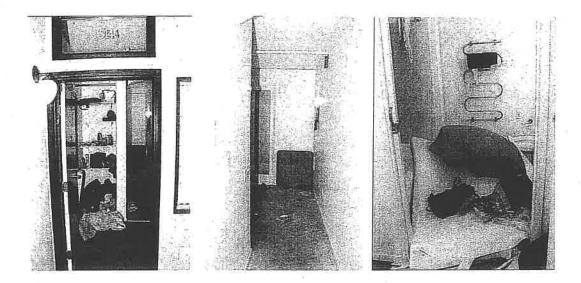
Crime Scene Technician Vargas #430 took pre-post video and photographs of the apartment. Officer Johnson was designated the case officer on the warrant search.

2116 Allston Way (Gaia Building) is a seven story apartment complex. There is an uncovered ground floor courtyard with the apartment units encircling the courtyard in a square shape. The main entry into the complex is on the Allston Street side. The main elevator is on the west side of the complex. This elevator accesses all levels including the rooftop.



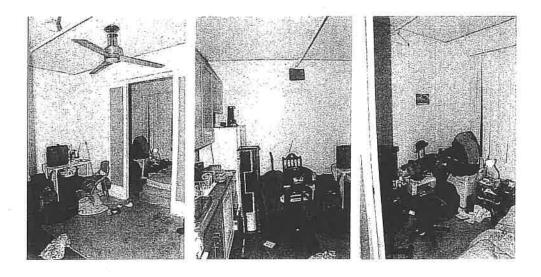
Apartment number "514" is located on the north side of the complex, 5th floor. The apartment number "514" is printed above the door. Upon entering the small entry hallway, the bathroom is

immediately to the left (west). Several feet into the apartment opens to a combination living room area and kitchen. The one bedroom is to the north.



The apartment was sparsely furnished, messy with many items strewn about. The futon type mattress (on which the struggle took place in the living room) was found in the bathroom. The mattress was placed in the bathroom by the paramedics at time of incident. Its original location was the northeast corner of the living room area.

The living room was furnished with a small table with a television on top (northwest corner), a chair with a "boom box" radio player (west), a second chair, and a small table folded and placed up against the wall (northeast corner). In the middle of the room there were several travel bags filled with clothes; cardboard boxes; a portable shopping cart; clothes strewn about on the floor; and a black trash bin filled with garbage and spoiled food.



The kitchen with standard appliances was in disarray with house wares stacked in the sink and along the counter top. There was some sort of tall rack in the kitchen as well.

The unkempt bedroom was furnished with a standard twin size bed next to the closet on the east side. A small table rack and refrigerator (empty of contents) was placed to the west. The remaining northwest area of the room was piled with travel bags, clothes, and a plastic bin that contained miscellaneous items. The west side of the room was furnished with a small table and shelving. The shelving had some office equipment. A television stand with a TV was in the southwest corner. On top of the TV was an assortment of pill bottles for the closet was disorganized with clothes on hangers and piled on the floor. There were small suitcases in the closet and in parts of the room. The closet shelf had miscellaneous household items.

The bathroom was unkempt and dirty. The hallway open closet with shelving had toiletry items and medication bottles. On the ground was a large trash bag filled with dirty clothes.

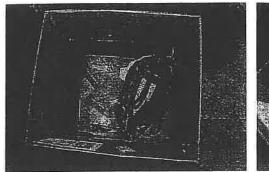
The following was observed (photo and video) and/or seized as evidence in the apartment. Any items seized were photographed and videoed prior to collection:

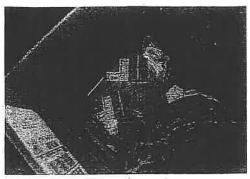
A leopard print halter top was found on the ground in the northeast corner of the living room. A leopard print robe was found draped on a chair in the living room. (The leopard print outfit was described by officers as being worn by Moore at the time of contact.)



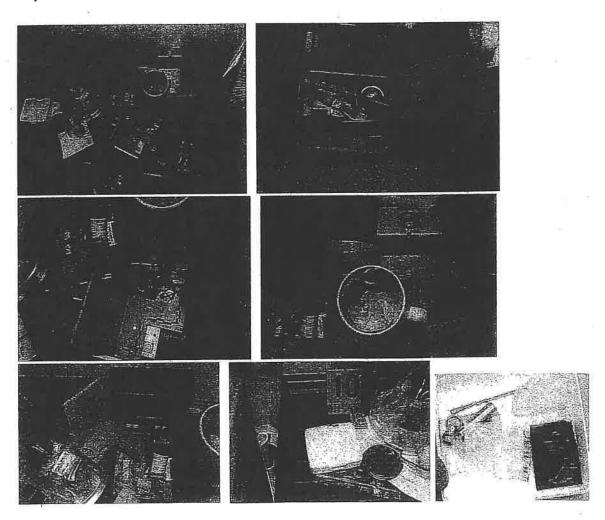


Inside a cardboard box in the living room was a straw cut to 2.5"; a 1"x1" clear plastic press-lock baggie with suspected Marijuana; a purse that held an empty inhaler (albuterol sulfate) box for (unknown medication); and a blue piece of paper that appeared to be a medical document for "Xavier Moore."

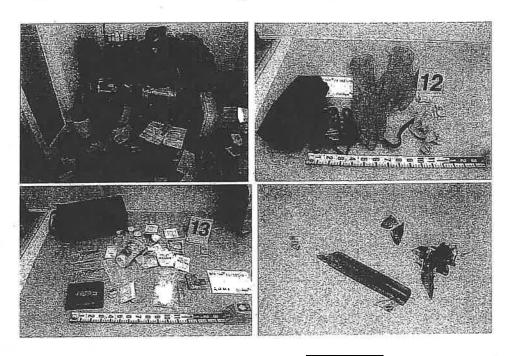




In the bedroom on the table next to the bed was an empty syringe in a plastic tray; a brown cosmetic jewelry type box containing unknown pills; a white coffee mug containing wax paper and white powder residue; a small black box containing numerous 300mg Gabapentin capsules (uncontrolled pharmaceutical for seizures); a white plastic first aid type container containing multiple clear plastic empty 1"x1" baggies with residue; an AT&T billing statement for John Hayes; and a collection notice for "Mathara D'Ambrosio" 1717 University Avenue, Berkeley.



Found in the television stand shelving was a small nylon bag containing rubber gloves and shoestrings. Also there was a small leather "SF" toiletry bag that contained lubricant, condoms, cotton balls, alcohol prep pads; rubber tourniquet, plastic caps; a small clear plastic press-lock baggie labeled "Vitamin C" containing crystal white powdery substance, and a broken crack pipe.



While conducting the search of Moore's apartment, (property management staff member) told Officer Grant that Moore's neighbors have complained in the past about Moore trying to sell them marijuana cigarettes.

About 1515 hrs, the search warrant investigation of the apartment concluded and the apartment secured.

In the CAD report, the following "units" were listed as attached to the incident: 4A9 (McIntosh), 4A7 (Kastmiler), 4A5 (Smith), 4A3 (Tu), 3A16 (Gardner), 3A14 (Frankel), 3A6 (Mathis), 3A4 (determined to be Brown), 3A2 (Kaplan), S24 (Ross), S17 (Phillips), ID1 (Jamison), S31 (Cardoza).

About 1528 hrs, Officer Johnson and I interviewed Officer K. Tu. It was at this time that Officer Tu submitted his supplemental report. Officer Tu was represented by Harry Stern (Law Firm of Rains Lucia & Stern). Officer Tu gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Tu's statement.

On the date/time of incident, Officer K. Tu was working patrol team four, call sign "4A3." Tu's supervising officers were Sergeants V. Huynh and A. Phillips. Tu did not sustain any injuries from the incident.

Officers Brown and Smith were dispatched to this incident. Officer Tu self dispatched to assist. Tu recalled the radio call for service involved an "altercation" with a "roommate" who was schizophrenic and off his medication. Tu arrived on scene and joined Brown and Smith. The officers contacted the reporting person, John Hayes. Hayes told officers that Moore was schizophrenic and off his medication and needed to be placed on a "5150 hold."

The door to apartment 514 was closed. Hayes unlocked and opened the door for the officers. Brown called out to Moore. Moore came to the threshold of the front door. Tu overheard Brown explain to Moore the reason for the police presence. Smith (by radio) began a records inquiry of Moore and Hayes. Hayes had a warrant. Brown instructed Smith to take Hayes in for his warrant. Smith left with Hayes.

Upon request by Brown, Moore stepped out of the apartment and onto the landing area. Brown told Moore he was being arrested for an outstanding warrant. Moore became "pretty upset," "elevated his voice" while "waving his arms around." Moore spoke of wanting to contact the FBI to clear up the warrant. Brown tried to calm Moore down. Moore wasn't complying so Brown "signaled" to Tu to assist her in handcuffing Moore.

Tu took a hold of Moore's left wrist as Brown took hold of the other. Moore started to scream. Moore pulled away and dragged Tu and Brown into the apartment. Tu and Brown struggled with Moore as Moore made it into the living room area of the apartment. Moore fell on top of futon type mattress (no frame) in the northeast corner of the living room. Tu and Brown fell along with Moore. Just before the three fell, Edward Sterling was sitting on the mattress but quickly got out of the way. Brown ordered Sterling out of the room.

Moore fell on his left side. Moore began kicking at Tu. Tu "sprawled" on top of Moore's hips to control Moore's legs and body. Tu took a hold of Moore's right arm and put it in a "rear wrist lock." Moore rolled onto his stomach, trapping Moore's left arm underneath his body. Brown struggled to take a hold of the left arm.

Tu recalled Officer Smith was first to arrive to assist. Thereafter, Tu recalled Officers Mathis, Gardner, and Kastmiler followed. With the additional help, Moore's hands were eventually handcuffed using two sets. Moore continued to struggle and kick. Moore's ankles were restrained using the Wrap device leg straps. The struggle with Moore occurred entirely on the futon-mattress.

Once Moore calmed, Moore was rolled onto his side to "prevent oxygen asphyxiation." About a minute after Moore finally calmed Brown announced Moore had stopped breathing and she was unable to find a pulse (carotid).

Tu assisted in removing the handcuff and officers rolled Moore on his back off the mattress and onto the floor. Brown checked for airway obstructions as Tu began chest compressions. Tu did not recall if the leg straps were removed from the ankles. Tu recalled hearing an officer use the radio to request emergency medical response. Some time passed and the Berkeley paramedics arrived. One of the paramedics relieved Tu.

Tu recalled Sergeants Cardoza and Phillips were on scene but he could not recall at what point the two arrived. Tu was tasked to follow the ambulance (and Moore) to the hospital. Tu remained at the hospital until relieved by Officer Frankel.

Tu described Moore as a "transgender" male, 5'9" to 5'10", about 350 lbs. Moore was wearing a light beige colored skirt and "tube top" that was thin in material. Tu believed based on his training and experience that Moore was under the influence of some type of drug. Tu, who is 6'3" and 230 lbs, described Moore to be strong person. Tu felt at certain points in the struggle he and Brown were being overpowered by Moore.

At no time did Officer Tu use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. At no time during Tu's contact with Moore did Moore say he was having difficulty breathing. Tu noted that it was inferred that Moore wasn't having difficulty breathing because Moore was able to yell and scream during the struggle. Further, neither Moore's body positioning during the struggle or the manner in which officers took a hold of Moore impeded Moore's ability to breathe.

Tu vaguely recalled one prior contact with Moore. The contact was at a different location and it involved Moore being evaluated for WI 5150. Tu had no prior contacts with John Hayes or Edward Sterling.

About 1710 hrs, Officer Johnson and I interviewed Officer B. Mathis. It was at this time that Officer Mathis submitted his supplemental report. Officer Mathis was represented by Sarah Burdick (Law Firm of Rains Lucia & Stern). Officer Mathis gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Mathis' statement.

On the date/time of incident, Officer B. Mathis was working patrol team three, call sign "3A6." Mathis' supervising officers were Sergeants S. Ross and B. Cardoza. Mathis did not sustain any injuries from the incident.

Mathis heard Brown's radio broadcast saying "we need additional units," or something similar to it. The radio broadcast had sounds of a "struggle." Mathis responded "Code-3" from Addison and MLK. Mathis only knew that the original call for service had something to do with a "415" (disturbance).

Somebody had put a card in the locking mechanism so the lobby door was unlocked. Mathis moved a small bench from the lobby to prevent the door from closing. Two other officers arrived about the same time. Mathis remembered one officer as Gardner but couldn't remember the other. The three rode up in the elevator together.

The three went to the open door to apartment "514." Mathis looked in to find a "very large person that [officers] were struggling with and getting thrown around" on top of a "thin" mattress or futon. Tu was at the "lower end" of Moore's body and was getting "kicked by the flailing legs." The "three" officers (Tu, Brown, and Smith) in the struggle were getting "bucked" as well. Mathis heard "a lot of... stop fighting, stop resisting" from the officers. The officers were having a "difficult time at controlling [the] individual."

Mathis went in and immediately took a hold of Moore's feet to stop Moore from kicking. Moore was on his front side, on top of the mattress. Moore was yelling, "Get off me" and "just screaming in general." Officers were yelling, "Stop resisting and give us your hands. Stop, stop." Mathis took one ankle and crossed it over the other but was "kicked off." Mathis (who is 6'3", 245 lbs) described Moore as "big" and "very strong." Mathis took a hold of Moore's feet and used his body weight to keep them immobile. Mathis noticed Moore was "naked" from the waist down. Mathis overheard officers say the Wrap device was brought; either by Sergeant Phillips or Cardoza. Mathis yelled, "Give me the leg strap."

Mathis overheard officers indicate the handcuffs were put on Moore. Mathis was able to restrain Moore's ankles with the Wrap devices leg strap. At this point Moore "kind of stopped fighting." Mathis overheard an officer asking for a spit hood. Mathis had one in his patrol car so he left the apartment to retrieve it. While at his car, Mathis heard the radio broadcast of officers starting CPR on Moore. Mathis waited until the paramedics arrived and escorted them to the apartment.

During Mathis' presence in the apartment, Mathis never heard Moore complain of pain or breathing difficulties or ask for medical help. Because Mathis was concentrating on restraining Moore's legs, Mathis didn't see the positioning of the other officers. Mathis recalled Tu was using his body to "keep [Moore] down or to control him." Tu was "pretty much on the right side... trying to hold the hips and the upper torso down." Tu's positioning, however, didn't affect Moore's ability to breathe; plus, Moore was "yelling and screaming."

At no time did Officer Mathis use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. Upon arrival, Mathis didn't have any independent knowledge as to why officers were trying to retrain Moore; Mathis simply went in to assist. When Mathis was leaving to retrieve the spit hood that's when he learned from Brown that Moore was being arrested for a warrant.

When Mathis returned to the apartment with the paramedics he saw Tu was doing chest compressions. A paramedic relieved Tu. Mathis assisted in clearing the futon-mattress away to give the paramedics room to work. Mathis put the futon-mattress in the bathroom.

Mathis stood guard outside the apartment with Tu. Mathis remembered Kastmiler was on scene and at some point, Kaplan and McIntosh as well. Mathis was then tasked by Sergeant Cardoza to conduct a neighborhood canvass for witnesses.

Mathis has never had prior contacts with Moore; however, Mathis recognized the name. Mathis knew Moore to have a history of "5150" evaluations, drug use, and resisting officers.

The two sergeants on scene inside the apartment were Phillips and Cardoza; with Cardoza as the primary scene supervisors.

About 1814 hrs, Officer Johnson and I interviewed Officer T. Gardner. It was at this time that Officer Gardner submitted his supplemental report. Officer Gardner was represented by Harry Stern (Law Firm of Rains Lucia & Stern). Officer Gardner gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Gardner's statement.

On the date/time of incident, Officer T. Gardner was working patrol team three, call sign "3A16." Gardner's supervising officers were Sergeants S. Ross and B. Cardoza. Gardner sustained a twisted knee from the incident.

Gardner heard the radio broadcast by Brown asking for "more officers or something to that effect." Gardner responded "Code-3" because it sounded as though Brown "was in some kind of struggle." Gardner knew Brown was on "some kind of disturbance" call; a "fight between roommates," and "three units" was dispatched.

Gardner arrived and got into the elevator with Officers Mathis and Kastmiler. Upon reaching the fifth floor and the open doorway to apartment "514," Gardner saw a "very large... obese ... person with three officers struggling to subdue him." Moore was "kind of on his knees and his elbows" or shoulders and Moore's hands were "partially behind his back." Moore was trying to rise up. Tu was on Moore's right and Brown was towards Moore's shoulder area. Smith was on Moore's left side.

Gardner was unclear exactly what Moore's position was on the mattress because Gardner was concentrating his attention on Moore's un-cuffed hands. One of Moore's hands was cuffed with the two sets of handcuffs but the other wasn't. Gardner took a hold of the un-cuffed hand to assist. Eventually, Moore was completely handcuffed.

Gardner believed Tu, Smith, and Brown were having a "very difficult time" with Moore and would not have been able to restrain Moore in handcuffs without the additional assistance. Tu appeared "fatigued" and unable to continue in the struggle. Gardner recalled hearing officers give Moore verbal commands similar to "stop resisting" and instructing Moore to put his hands behind his back. Moore was yelling but Gardner couldn't remember what. Moore did not complain of pain or say he was having physical difficulties. Gardner believed Moore was under the influence of some sort of "stimulant." Moore was "strong... in terms of his resistance."

Moore was "partially naked" with "something around his legs." Mathis was trying to restrain Moore's legs. Sergeant Cardoza arrived with the Wrap device. Gardner assisted Mathis in restraining Moore's legs with the Wrap's leg strap. Moore continued to struggle by "trying to lift up his legs." As Moore was kept "partially on his side," Gardner and the other officers tried their best to keep Moore "immobile" until transport. None of the officers were on top of Moore.

It was decided that a medical gurney would be needed to remove Moore from the apartment. Sergeant Phillips made the request on the radio for BFD to bring a gurney. Gardner still didn't have independent knowledge as to why Moore was handcuffed and to be transported.

While awaiting the gurney, at some point in time, Moore began having difficulty breathing. Sergeant Phillips radioed for emergency medical response. Gardner un-cuffed Moore's hands and Moore was turned onto his back. Tu started chest compressions. Gardner went out to the apartment landing to direct the paramedics in. At one point, Gardner volunteered to relieve Tu in doing chest compressions but Tu elected to continue until the paramedics arrived.

At no time did Gardner use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. Gardner had no prior knowledge or contact with Moore.

About 1830 hrs, Officer Grant spoke to
2013, was tasked to unclog a drain in Xavier Moore's apartment. Moore answered the
door with a lighter in one hand and a piece of tin foil in the other. While working inside,
noticed Moore and another guest were smoking. Moore had a lighter in one hand and a piece of
straw in the other. believed Moore and his guest were smoking drugs.
saw, in a partially opened drawer in the kitchen sink, a piece of cylindrical glass that he believed was
a pipe used to smoke methamphetamine.

About 2009 hrs, Officer Johnson and I interviewed Sergeant B. Cardoza. Sergeant Cardoza was represented by Harry Stern (Law Firm of Rains Lucia and Stern). Sergeant Cardoza gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Sergeant Cardoza's statement.

On the date/time of incident, Sergeant B. Cardoza was working as a supervisor for patrol team three; call sign "S31." Cardoza's commanding officer was Lt. R. Files (Watch Commander).

Cardoza responded to Brown's radio request for immediate assistance. Cardoza responded from the police station "Code-3." Cardoza was aware Brown and other officers had been dispatched to an incident involving a "schizophrenic" individual off his medication and intoxicated.

Upon arrival at 2116 Allston Way, Cardoza went up in the elevator with Sergeant Phillips. Cardoza had the Wrap device with him. The apartment door was open. Cardoza saw a "group of officers restraining an individual on a mattress." "The mattress was on the floor and the officers were on top of the individual. The individual was screaming and actively resisting, both kicking and fighting the officers." Moore was "almost naked." Cardoza could not recall the words Moore was screaming. Cardoza did not hear Moore say he needed any form of medical attention. Cardoza recalled Officers Mathis, Brown, and Tu were involved in the struggle with Moore along with other officers. Mathis was "attempting to restrain [Moore's] legs."

Moore was on top of the mattress lying on his front. Moore was "attempting to use his feet to kick the officers." Moore was "not compliant with the officers." Cardoza was unable to recall the positioning of Tu or Brown. Cardoza did not assist in the physical struggle. Cardoza was unable to recall if officers were giving verbal commands.

Cardoza did not recall seeing officers put their weight on top of Moore. Cardoza did not recall seeing any officers on top of Moore's head, neck, or chest area, or stomach area. Cardoza did not recall Moore say he was having trouble breathing. At the time Cardoza entered he had no independent knowledge of why Moore was being handcuffed. At no time did Cardoza witness any officer use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore.

Officers were "eventually able to handcuff" Moore behind his back. Moore's ankles were restrained with the Wrap's leg strap. Moore continued "resisting and ... screaming." An officer radioed for a gurney. Cardoza decided he would guide the paramedics in. When Cardoza left the apartment, Moore was still resisting. Moore was still "face down on the mattress."

Cardoza returned to the apartment with the paramedics. Cardoza saw Moore was on his back, un-cuffed, and Officer Tu was doing chest compressions. The paramedics took over CPR and transported Moore to the hospital.

Cardoza identified himself as the scene supervisor. Cardoza tasked officers with scene security, witness statements and neighborhood canvasses. The other officers present at the apartment were Kastmiler, Gardner, Smith, and McIntosh.

About 2010, Officer Grant spoke with Elysse Moore (Xavier's step-mother). Xavier was regularly being tested for HIV and Hepatitis. Most of Xavier's medical treatments were done at the Tom Waddell Clinic (formerly the Height Ashbury Clinic) in San Francisco where a special unit worked with transgender patients. Moore was receiving hormone shots. Xavier had high blood pressure for several years but he wasn't taking his medication for this either. In the summer of 2012, Xavier spent time at the John George detoxification facility.

About 2045 hrs, Officer Johnson and I interviewed Officer B. Smith. It was at this time that Officer Smith submitted his supplemental report. Officer Smith was represented by Sarah Burdick (Law Firm of Rains Lucia & Stern). Officer Smith gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Smith's statement.

On the date/time of incident, Officer B. Smith was working patrol team four, call sign "4A5." Smith's supervising officers were Sergeants V. Huynh and A. Phillips. Smith did not sustain any injuries from the incident.

Officer Smith was dispatched to this call for service as a cover officer for Officer Brown. En route to the call Smith ran warrant/records checks on Xavier Moore so that he could "see who it is that [he] was going to be dealing with potentially." Smith found a warrant for Xavier Moore out of San Francisco for \$10,000 but the birth year was listed as 1952; the month and day were correct. When Smith arrived on scene he met with Brown and Tu. Smith told Brown about the warrant but advised he was unsure if it was for Moore because of the birth year.

The three of them spoke with John Hayes the reporting party. Hayes spoke of being kicked out of his apartment by his roommate Moore. Moore was "schizophrenic ... drunk and high." Hayes believed Moore was "5150" and needed to be sent to a "psychiatric facility." Hayes said there were knives in the kitchen but Hayes didn't know if (Moore) had any in his possession.

The door to the apartment was closed. Hayes used his key to unlock the door and opened it. Brown called into the apartment. Moore "stepped partially out onto the landing." Smith stood as a cover officer concerned about officers back was to a 5 story drop. Moore was wearing some sort of multicolored tube or halter top. Moore was "roughly 5'10" and "close to 370 lbs, maybe pushing 400 lbs."

Smith overheard Brown's conversation with Moore. Moore couldn't stay "on topic" and kept insisting he wanted to speak with the FBI to confirm the officers' credentials. Smith believed based on his training and experience that Moore was "under the influence of some sort of narcotic." Moore's "pupils appeared to be dilated." Moore was "very fidgety," he was constantly "pulling his clothes, scratching at this body," and had a "hard time standing still." Numerous times Brown tried to bring Moore back on topic but Moore kept interrupting and wouldn't pay attention.

Smith used his police radio to conduct warrant/records checks on both Moore and Hayes. Smith learned Hayes had a "\$5,000 warrant out of the City of San Francisco," as well as two other smaller warrants. Moore had a "caution code" for aggravated assault. The records bureau operator advised of no warrants for Moore. Smith passed on the information to Brown on a field interview card.

Brown requested Smith take Hayes in on his warrant. Smith left with Hayes, leaving Brown and Tu. At his police car, Smith heard Brown's radio broadcast for "more officers" and the sounds of a "scuffle" in the background. Smith interpreted this broadcast as a need for immediate assistance. Smith placed Hayes in the back of his police car, locked the doors, and ran back up to the apartment.

Smith didn't see Brown or Tu on the landing. Smith looked into the open door to find Moore's "belly on the mattress" and Brown on the left side of Moore trying to take a hold of Moore's arm. Tu was "lying" on Moore's legs and the buttocks area and was getting "bucked up in the air." Tu had Moore's handcuffed right arm behind Moore's back. Moore's upper body was on the mattress while Moore's feet were "more on the floor area." Smith didn't know the reason why Brown and Tu were trying to handcuff Moore; Smith just went in to assist.

Smith tried pulling on Moore's left arm that was trapped under Moore's body. Officers rolled Moore's body to the left to take Moore's body off the left arm. Moore extended his left arm up towards his head which allowed Brown to take a hold of it. Brown was having difficulty putting the left arm behind Moore's back for handcuffing. Smith asked Brown to back away because space was limited. Smith took a hold of Moore's left fingers and was able to put Moore's left arm behind Moore's back. A second set of cuff (Smith could not recall which officers' handcuffs) was linked to the first and the left arm was eventually restrained in handcuffs.

During the struggle Moore was yelling words to the effect of "fuck you," "I'm not going to go," and "lots of rambling." Even after being handcuffed, Moore continued "kicking, screaming, cussing... very animated, very angry, bucking, trying to pull his arms back." At no time did Moore say he was in need of medical attention.

Other officers began arriving just as Moore was handcuffed by Smith, Tu, and Brown. Smith alerted other officers that he had a prisoner in his police car and had to leave. When Smith left, the last thing he saw was Tu had "moved off Moore, off to the right side, and was just holding the arm." Brown "completely let go of Moore." Sergeant Phillips was entering the apartment with the Wrap device. The other officers in the apartment were Gardner, Mathis and Sergeant Cardoza. Moore was still lying on his front side, still partially on top of the mattress, and no officers were on top of Moore.

At no time did Smith use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. At no time did Smith or other officers place their weight on Moore's, upper body, head or neck area. Smith had no prior knowledge or contact with Moore.

While at the police car readying Hayes to be driven to the jail, Smith heard a radio broadcast that Moore had stopped breathing and officers were starting CPR. Sergeant Ross was on the street. Smith asked Sgt. Ross to task another officer to transport Hayes to jail so Smith could remain on scene. Officer Kaplan transported Hayes to city jail. Smith stayed in front of the apartment complex awaiting further instructions.

Sergeant Phillips telephoned Smith tasking Smith to take a written statement from Hayes. Smith left to meet with Hayes again at the jail. Smith never returned to the apartment.

About 2139 hrs, Officer Johnson and I interviewed Officer N. Kastmiler. It was at this time that Officer Kastmiler submitted his supplemental report. Officer Kastmiler was represented by Harry Stern (Law Firm of Rains Lucia & Stern). Officer Kastmiler gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Kastmiler's statement.

On the date/time of incident, Officer Kastmiler was working patrol team four, call sign "4A7." Kastmiler's supervising officers were Sergeants V. Huynh and A. Phillips. Kastmiler did not sustain any injuries from the incident.

Kastmiler was working routine patrol when he heard Brown's radio broadcast for "emergency cover." Kastmiler was in the South Campus area and responded "Code-3." Upon arrival, Kastmiler rode up in the elevator with Officers Mathis and Gardner. Kastmiler entered the open door to apartment 514 to see a large male lying in the corner on a mattress; the person was "very large in stature," "6'2" or 6'3," and "probably about 400 pounds." Brown, Tu and Smith were "struggling to control him and [Moore] was kicking and flailing around," even though Moore was already handcuffed.

Kastmiler "rushed over" to assist and tried to take control of Moore's arms. Kastmiler had no independent knowledge of why Moore was handcuffed; he simply went in to assist officers. Moore was "trying to kick" officers off his legs. Moore appeared as though he was trying to stand back up. Kastmiler used his "shin and knee" in the attempt to pin down Moore's legs. Moore's stomach was still down on the mattress. Tu was to Moore's right and Brown to the left towards the "upper portion" of Moore's body. Smith was on the left side of Moore as well.

Mathis and Gardner were "trying to control Moore's legs," however, Kastmiler wasn't paying attention to their efforts. Kastmiler remembered Sergeants Phillips and Cardoza arriving but

could not recall the other officers. Moore wasn't yelling or saying anything. Kastmiler did hear officers telling Moore to "calm down" and "stop resisting."

Kastmiler didn't see any officer put their weight on Moore's neck, chest, or stomach area. At some point Moore stopped resisting. Moore was lying on his side. About a "minute" later, Moore started having difficulty breathing. Brown said something to the effect of, "I think he's not breathing." Kastmiler placed his hand on Moore's chest to see if it was rising and falling. Kastmiler couldn't find a pulse on Moore's wrist. Officers "immediately removed [Moore's] handcuffs." Kastmiler kept contact with Moore's right arm and right leg because Moore was now un-cuffed.

At no time did Kastmiler use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. Kastmiler's had prior contacts with Moore. Moore used to reside at the University Hotel. Kastmiler responded to calls regarding disturbances, fights, and drug use involving Moore.

After the paramedics arrived and took Moore, Kastmiler was tasked to take a witness statement from Edward Sterling.

February 14, 2013

About 0930 hrs, Officer P. Lee and I attended the autopsy of Xavier Moore. Alameda County Coroner's Office Medical Examiner, Doctor Beaver conducted the autopsy. (Coroner's Office Case No. 2013-00538) Crime Scene Technician Vargas took photographs before and during the autopsy.

According to the medical staff a broken small cylindrical glass pipe fell out of Moore's hair when Moore was placed on the autopsy table. I looked at the glass pipe and found the shape, size and appearance to be consistent with a crack or meth pipe.

Dr. Beaver, verbally told me (preliminarily) there was no trauma to Moore's face, head, brain, face, neck (larynx), chest, heart, or lungs. There were marks left on the wrists caused by the handcuffs. According to Dr. Beaver, the internal breakage of the blood vessels (bruising) in both wrists was consistent with standard handcuffing; "insignificant" and normal. There was no internal injury caused to the ankles due to the Wrap's leg restraint strap.

The autopsy report would be pended awaiting the toxicology results.

About 1817 hrs, Officer Grant and I interviewed Officer G. Brown. It was at this time that Officer Brown submitted her police report. Officer Brown was represented by Harry Stern (Law Firm of Rains Lucia & Stern). Officer Brown gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Officer Brown's statement.

On the date/time of incident, Officer G. Brown was working patrol team three, call sign "3A4." Brown's supervising officers were Sergeants B. Cardoza and S. Ross. Brown did not sustain any injuries from the incident.

Brown was dispatched to a "415" (disturbance) between roommates. Moore was reported to be "schizophrenic, off meds, and had kicked the roommate (reporting party) out. The call was in Brown's area of responsibility, thus Brown was the primary handling officer. Officer Smith was assigned as cover officer. Officer Tu voluntarily attached himself to the call for service.

Brown and Tu arrived at about the same time. John Hayes walked up to Brown and Tu while they were in front of the apartment. At about this time Smith arrived on scene. Hayes repeated to Brown why he called and said Moore needed to be "5150'd." Hayes said he was on the lease but was "kicked out." When asked why, Hayes replied Moore had been "drinking and doing drugs all day." Moore wanted Hayes to give him more money for drugs and the two argued.

Hayes led Brown, Tu, and Smith up to the apartment on level 5. The apartment door to 514 was closed. Apartment 514 is located on the northern side of the complex which is square in shape with an open courtyard in the middle on the ground floor. Hayes unlocked the door with his key and opened it for the officers.

Brown called out to Moore by saying, "Xavier." Moore came to the door. Brown was surprised because she was expecting a man. Rather, Moore was "fair skinned... about 5'8", heavy-set woman, or looked to be a woman, gray extensions all the way down the back." Moore was wearing a "tube top animal print and a wrap-around skirt that was also animal print."

Brown told Moore that his roommate Hayes had called the police and asked Moore what was going on. Moore stood in the doorway and "started talking about... the FBI and that he didn't feel safe." Moore said the FBI was "following [him]." Moore started calling Brown "Gail," "Carol," and "Wanda." When Brown told Moore she wasn't neither of them, Moore said, "Well, I see them right behind you." Moore then began talking about dinosaurs. Brown repeatedly tried to bring Moore back on topic; however, Moore kept talking about other matters. Moore was very "theatrical" as he spoke. Moore saw Hayes on the landing and referred to Hayes as "Crunchy."

Tu was acting as cover officer as Smith began running records checks. Smith "informed" Brown that Hayes had a \$5,000 warrant out of San Francisco. Brown instructed Smith to confirm the warrant and take Hayes "down to the station." Smith, prior to arrival, conducted a records check on Moore. Before making contact with Moore, Smith told Brown that "Xavier Moore" may have a \$10,000 warrant out of San Francisco. Brown knew Moore recently moved to Berkeley from

San Francisco. Brown and Smith did not discuss the warrant any further and proceeded to make contact with Moore. In Brown's mind, Moore had an active warrant.

Smith left with Hayes. Brown and Tu remained with Moore. Moore continued to be "theatrical" and kept talking about the FBI. Moore was "not making sense" and appeared to Brown that Moore was "pretty high" and "5150 all in one." Brown "looked at" Tu to "let him know" they were "going to take [Moore] in. Brown and Tu moved closer to Moore. Brown told Moore that he had a warrant for his arrest. Moore replied, "No, I don't have a warrant." Brown responded, "Well yeah, you do and we need to go down to the station and get it cleared up…" Moore said he needed to "go inside [his apt] and call the FBI to get this cleared up."

Moore insisted on using the phone to call the FBI in the apartment and not at the police station. Brown made it clear to Moore that he was under arrest for his warrant. When Moore continued to refuse the arrest, Brown and Tu each moved in and took a hold of Moore's hands. Brown took a hold of Moore's right hand and Tu took the left. Moore "exploded." Moore drew his hands back and pulled both Tu and Brown forward. Tu and Brown hung on and were dragged into Moore's apartment. All three fell on the "twin size" mattress.

Moore's entire body fell on the mattress. Moore fell on his "stomach, partially sideways," and Moore's face was turned to the side. Brown fell "over [Moore's] shoulder, and lost the grip on Moore's hand.

Brown was able to handcuff what she believed was Moore's right hand. Moore "buried" his other arm "under him" and Brown and Tu struggled to take a hold of this arm. Both officers yelled for Moore to "stop resisting." Tu "straddled" Moore. Brown "speculate[d]" Tu was "using his weight to try to control" Moore. Brown noticed a man in a chair next to them. Brown ordered this man (later identified as Edward Sterling) to "get out" for safety reasons. Sterling complied and left the apartment. Brown used her radio and requested, "Code-3 cover, additional units."

Although Tu is "over six foot" tall and over 200 lbs and strong, Brown felt the two of them were having a "very difficult" time controlling Moore. Brown put her weight on Moore's "shoulder blades"; not on Moore's neck or head.

Additional officers arrived and helped Brown and Tu restrain Moore in handcuffs (two sets). Just prior to handcuffing, Moore said something to the effect of, "Okay, okay, I'm not going to resist anymore" and "relaxed." Brown could only remember the first officers to arrive were Mathis, Gardner and one other. Even after the handcuffs were on, Moore "continued kicking and bulking." Because Moore kept kicking, officers requested the Wrap device. Sergeant Phillips arrived with the Wrap. The leg strap was used to retrain Moore's ankles. Moore continued to resist. Officers were "just trying to hold [Moore] down."

Brown did not see any officer putting their knees or their weight on top of Moore's head, neck, chest, or stomach area. During the entire struggle, Moore never said he was having trouble breathing or that he was injured in any way.

Eventually, Moore just "stopped" resisting, "like he was going to take a rest." Moore was "partially on his side" (left side) and "halfway on his stomach." Brown kept watch and at some point didn't see Moore's "chest moving." Brown told the other officers, "I don't think he's breathing. Officers put Moore "completely" on his side. Brown saw Moore's chest moving. Brown checked to find Moore had a pulse. Moore "shrugged his shoulders, shook his head a little bit..." and "moved his head." Brown could not recall if Moore's eyes were open.

About a minute later, Moore's chest wasn't moving again. Brown told the officers, "I don't think he's breathing." Brown checked for a pulse and announced, "I can't get a pulse." Officers started shouting, "Let's get the cuffs off him," and removed the handcuffs. Officers put Moore on his back. The mattress was soft so officers moved Moore to the floor. Brown already knew the paramedics were en route with a gurney. Brown yelled out for the paramedics to respond, "Code-three, code-three, he's not breathing." Tu began chest compressions. Brown yelled for somebody to "get a mask" (CPR mask) as she kept Moore's airway open.

At this point, Brown remembered Sergeants Phillips and Cardoza, Officers Smith, Mathis and Gardner in the apartment. The paramedics arrived and took over CPR. Moore was taken to the hospital.

Sergeant Cardoza began making officer task assignments (e.g. neighborhood canvasses, witness interviews, scene documentation, etc.). Tu volunteered to follow the ambulance but Sergeant Phillips was concerned about Tu because he was "limping," "out of breath" and, "sweating" from the struggle and doing chest compressions. Tu, however, followed the ambulance to the hospital.

Cardoza instructed Brown to return to the station and begin her report. Cardoza was scene supervisor on the incident. At no time did Brown use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore. Even if Moore did not have a warrant Brown was intent putting Moore on a WI 5150 hold.

Brown didn't have prior contacts with Moore, however, Brown "knew of" Moore. About a month prior Moore's mother requested a welfare check of Moore. Moore's mother was concerned because Moore was "depressed." Moore was going through a "sex change" and he was a "heavy drug user." Moore's mother spoke of Moore having a lot of run-ins with SFPD prior to moving to Berkeley. Brown was unable to make contact with Moore on this event.

About 2020 hrs, Officer Grant and I interviewed Sergeant A. Phillips. It was at this time that Sergeant Phillips submitted her supplemental report. Sergeant Phillips was represented by Harry Stern (Law Firm of Rains Lucia & Stern). Sergeant Phillips gave a voluntary statement (waiver signed). The interview was audio (digital) recorded. The following is a summary of Sergeant Phillips' statement.

On the date/time of incident, Sergeant A. Phillips was working as a supervisor for patrol team four; call sign "S17." Phillips' commanding officer was Lt. R. Files (Watch Commander).

Phillips heard Officer Brown broadcast on the radio something to the effect of "send us more cover" and screaming in the background. Phillips believed Brown was in need of immediate assistance. Phillips didn't know the details but knew Brown and the other officers were on a "5150" call. Phillips responded "Code-3" from the police station. Phillips and Sergeant Cardoza arrived at the same time and rode up in the elevator together.

The door to apartment 514 was open. Phillips entered to see Officers Brown, Tu, Gardner, and Mathis "attempting to restrain an individual [Moore] on a mattress on the floor. This individual "was lying on their stomach in handcuffs – two sets of handcuffs." Phillips couldn't "tell if [Moore] was a male or female. Moore had "long braids." Moore was "African American" and appeared to weigh "somewhere between 350-380 pounds." Moore was "nude." At some point Phillips asked Brown if Moore was male or female. Brown told Phillips that Moore was male, but "pre-op transgender or transsexual..."

Officers were holding Moore's arms and legs. Moore was kicking. Mathis was trying to prevent Moore from kicking. Phillips believed officers were having "a lot of difficulty" controlling Moore. Phillips didn't recall hearing Moore yell or scream. Phillips recalled officers were saying things to the effect of "stop resisting" and "stop moving" while "struggling" with Moore. Phillips recalled hearing somebody say, "... get a spit mask," and officers asking for the Wrap device. Sergeant Cardoza had already brought the Wrap device with him.

Brown was positioned "closest to [Moore's] head" but none of the officers were holding down Moore's head, neck, chest, or stomach area. Tu was holding down Moore's "upper body area." Moore's "face was turned to the side" and officers were "just trying to hold him." Mathis and Gardner were positioned at Moore's legs because Moore was still kicking even though he was handcuffed. Mathis yelled for the ankle strap of the Wrap device. Phillips handed Mathis the ankle strap. After the ankle strap was placed, Moore started to "calm down." At no time did Phillips hear Moore complain of not being to breath or that "anybody was on his back."

Phillips radioed for a gurney. Its purpose was to assist in keeping Moore restrained and removing him from the room due his large size. Secondly, Phillips wanted the paramedics on

hand "in case [Moore] needed any sort of medical help" because of Moore's "size and condition and that [Moore's] been fighting with officers and there would be a potential ... health concern."

Tu appeared "exhausted." Phillips sent Tu out of the apartment to take a rest. Officers still had their "hands on [Moore] just in case," because there wasn't any more resisting. At some point, Gardner and Mathis left the apartment and Tu returned. Moore was lying "completely on his left side" while officers awaited BFD with the gurney.

At some point in time, Brown asked if Moore was still breathing. Phillips saw Moore's "chest move," head move, and Moore "opened his eyes." Phillips answered that Moore was breathing. About a minute later, Moore "stopped breathing." Phillips radioed "we're going to need medical ... subject is not breathing. We're starting CPR."

Officers rolled Moore onto his back and removed the handcuffs. Tu began chest compressions as Kastmiler stood close by for support. Some time passed and the paramedics arrived. The paramedics asked if Moore had ingested drugs. Phillips spoke with Edward Sterling outside the apartment. Sterling identified himself as Moore's "caretaker." Sterling told Phillips that Moore used methamphetamine, heroin, "smokes weed," and drinks alcohol on a "regular basis." Phillips relayed this information to the paramedics. Officers cleared some space in the apartment for the paramedics to works. The futon-mattress was moved into the bathroom.

To this point Phillips did not know why Moore was handcuffed or what his custodial status was. Phillips asked Brown as the paramedics were working on Moore. Brown told Phillips Moore had a \$10,000 warrant. The one instant Phillips physically touched Moore was to remove the leg straps as Moore was being tended to by the paramedics. At no time did Phillips use or witness other officers use hand strikes, kicks, impact weapons, OC, or their service pistol in any manner during the struggle with Moore.

Sergeant Cardoza was scene supervisor and Officer Brown was case officer. Phillips assisted Cardoza in coordinating officer tasks and assignments. Tu called Phillips and informed her that Moore was declared dead at 0134 hrs.

Phillips had a prior contact with Moore: "Less than a year ago" Phillips was one of three officers that responded to an address in "Beat-13." Moore's father requested the police "5150" Xavier. Xavier was "drunk" and "using drugs" and did to on a daily basis. Phillips was able to convince Xavier to voluntarily go to the hospital. Officers located empty bottles of alcohol and crack pipes in Xavier's possessions.

February 19, 2013

About 2040 hrs, Officers Grant, P. Lee and I re-canvassed the Gaia Building for witnesses. (Detailed list of residents contacted were documented on other supplemental reports)

Most did not see or hear the police action on 02-12-13 around 2349 hrs. The residents that witnessed the police action on 02-12-13 only heard sounds of yelling and screaming. One resident was able to hear Moore yelling words to the effect of, "Get off me," "you're hurting me," and "don't touch me." Another resident heard Moore yell, "No get off me." Nobody reported eyewitnessing the physical struggle between officers and Moore.

Most of the residents did not have prior interactions with Moore. Those residents that did reported the following in summary.

Moore was often under the influence of drugs. Residents described Moore as often "tweaking," "impaired," "weird," "spaced out," "twitching," "sketchy," "high all the time," and talking to herself. Many residents (particularly on the 5th floor) said Moore would routinely knock on their doors asking to borrow a cell phone or cigarettes. Some residents said Moore tried on more than one occasion to sell them "speed" or other drugs. Moore often lingered on the landing smoking or loiters in the lower lobby. Many people visited Moore's apartment.

February 26, 2013

About 0945 hrs, I attempted contact with John Hayes at 2116 Allston Way #514 in order to get information on "Angel." According to Edward Sterling, "Angel" (known to Sterling as Moore's "girlfriend") was present in the apartment but left sometime prior to police involvement. There was no answer. I left my business card requesting a call back.

I contacted the Panoramic Management at 1916 Oxford Way, Berkeley. Hayes is not on the lease as Hayes alleged. The apartment is currently occupied by "squatters." The property management intends to pursue eviction on the occupants beginning on 02-28-13.

February 27, 2013

About 1415 hrs, I spoke to "Chris" at Panoramic Management. "Chris" confirmed the Gaia Building only had surveillance cameras in the ground floor lobby, elevator, and the parking garage. The residential floors and landings do not have surveillance coverage.

March 4, 2013

About 0950 hrs, the Honorable Judge Baranco of the Superior Court ordered the search of Alta Bates Hospital, Custodian of Records for any and all medical records for Xavier Moore.

About 1030 hrs, I obtained Xavier Moore's emergency room records for 02-13-13 and any past medical records in the custody of Alta Bates Hospital.

In summary, since April-2012, Moore had been admitted to Alta Bates Hospital about (5) five times. Most of the visits to Alta Bates Hospital were because he was placed on a 5150 hold for violent behavior, including suicidal concerns and/or for psychiatric evaluations for auditory and visual hallucinations. The hospital reports indicted Moore had a history of schizophrenia and drug (crack) and alcohol abuse.

(The Alta Bates medical reports are included in this report.)

About 1700 hrs, I obtained from the Communications Center the CAD details for the Fire Department's response to this incident (13-01652). According to the CAD timestamps, on 02-13-13 at about 0035 hrs, a request for "BFD FOR GRNY" was made. At about 0036 hrs, Engine-5 and Medic-1 were "dispatched." At about 0043 hrs, Medic-1 was "on scene." At 0104 hrs, Medic-1 was "transporting" to Alta Bates Hospital. At about 0110 hrs, Medic-1 was "at hospital."

Through cross-checks using Accurint and DMV, I was able to locate a	
72. The last known address is	

March 5, 2013

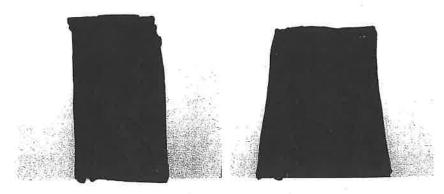
About 1400 hrs, I attempted to contact	Nobody
answered the door. A neighboring business recognized sphotograph. The	employee
said moved out several months ago.	

About 1500 hrs, I spoke with John Hayes on the telephone. Hayes has only met "Angel" a "couple times" in the past. Hayes said "Angel" is a transsexual (male to female). "Angel" is 38 or 39 years old. Hayes had no further information on "Angel."

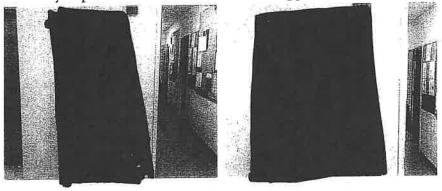
I emailed Edward Sterling requesting a call back. There was no telephone number listed in the reports.

March 7, 2013

About 1930 hrs, I met with Officer G. Brown in the homicide office. Brown was wearing a long sleeved wool Berkeley police uniform along with her duty belt. Brown's uniform had the standard Berkeley patches on each shoulder, three service stripes, a name bar, and the Berkeley star badge. Brown said this uniform assembly accurately depicted what she wore and how she appeared on the night of the incident.



About 2020 hrs, I met with Officer K. Tu at the station. Tu was wearing a long sleeved blended Berkeley police uniform along with his duty belt. Tu's uniform had the standard Berkeley patches on each shoulder, name embroidery, and the Berkeley badge patch. Tu said this uniform assembly accurately depicted what he wore and how he appeared on the night of the incident.



March 12, 2013

Fire Department CAD history showed on 01-11-13 about 0819 hrs, the Berkeley Fire Department (BFD) responded to a medical call at 2116 Allston Way #514, Berkeley (Incident No. 2013-0331). The call originated from 510-841-1195. According to the Accurint database, this is a Pacific Bell landline number to the apartment; subscribed by "John Hayes." I listened to the 911 call associated with this event.

There was a 911 hang-up from Moore's apartment. About 0819 hrs, the 911 dispatcher called the number back. A female voice answered the phone. When the dispatcher asked why a 911 call was placed the female answered, "Right, it didn't ring yet." When asked what was happening, the female responded, "I'll get back with you guys when I call you guys." When asked again what was happening the female answered, "There's nothing going on as of now, I'll call the non-emergency police." When asked again why 911 was called the female answered, "Because I'm having trouble breathing." The female insisted she'd call back if necessary. When the dispatcher continued to make inquiries the female responded, "I want to wait till I go to my part of the universe before I start calling for an ambulance..." When the dispatcher asked to speak with somebody else, there was background noise and eventually the line disconnected.

About 0821 hrs the same female called back and said, "Yeah, hi, I'm calling because I need to get an ambulance, so that I can, um, go to the hospital." When asked what was wrong the female responded, "It's nothing mental, it's physical... I'm having trouble breathing." The female said she was 41 years old and her name was "Xavier Moore." The dispatcher told Moore an ambulance was going to be sent.

About 0905 hrs, I obtained a search warrant (signed by the Honorable Judge T. Rogers, Superior Court) for the Berkeley Fire Department Patient Care Reports for emergency services provided to Xavier Moore on 01-11-13 (13-0331) and the instant incident, 02-13-13 (13-1652).

The Patient Care Report for 01-11-13 listed the nature of call to be "breathing problems." The patient complaints listed were "weakness," "nausea," and "breathing problems." The report narrative indicated Moore was possibly suffering from "flu-like symptoms" and "productive cough." Moore was taken to Alta Bates Hospital for further examination and/or treatment.

The Patient Care Report for 02-13-13 listed the nature of call to be "EMS Response." The patient complaints listed were "unconscious/fainting," "death," and "cardiovascular." The report narrative indicated Moore struggled with police and then became unconscious. The narrative indicated the medical interventions used by the paramedics.

(The Patient Care Reports are included in this report.)

About 1400 hrs, I received a flash drive from Panoramic Management that contained the video footage of the Gaia Building's lobby, elevator, and street on the night of 02-12-13 about 2356 hrs to 02-13-13 about 0130 hrs.

The following events are based on the Gaia Building's video system and the video system's date and time stamp:

Video file titled "Police1(1)(1).avi" is footage of the sidewalk in front of the Gaia building.

02/12/13	23:56:35	Officers Tu and Brown arrives
	23:57:15	Officer Smith arrives

Video file titled "Police(2)1.avi" is continued footage of the sidewalk in front of the Gaia.

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02/13/13	00:00:05	John Hayes contacts officers outside the building	
	00:26:34	Officer Smith exits building with Hayes	
	00:28:38	Officer Smith reenters building	
	00:29:36	Officer Mathis arrives	
	00:30:23	Officers Gardner and Kastmiler arrives	
	00:30:30	Sergeant Phillips arrives	
	00:30:45	Sergeant Cardoza arrives	

00:34:45	Officer Mathis exits building in search of a spit mask
00:35:36	Sergeant Cardoza exits building
00:40:00	Fire paramedics arrives
00:40:52	Paramedics enter building

Video file titled "Police(2)(2).avi" is continued footage of the sidewalk in front of the Gaia. 02/13/13 01:01:45 Paramedics exit the building with Moore

Video file titled "Police(3)1.avi" is footage of the lobby area in the Gaia Building (The only footage reviewed was the date/time when Officers Brown, Tu, and Smith entered the building with John Hayes. This footage clearly captures the officers' uniform and appearance.) 02/13/13 00:03:06 Hayes leads Officers Brown, Tu, and Smith into the Gaia lobby

Video file titled "PoliceElevator(1).avi" is footage of inside the elevator of the Gaia Building. (During the first 24 minutes of this file footage the camera was inoperable.)

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02/13/13	00:25:40	Smith enters elevator with Hayes en route to jail
	00:29:43	Smith exits elevator on 5th floor en route to assist Tu and Brown
	00:30:52	Officer Mathis, Gardner, and Kastmiler exit elevator on 5th floor
	00:41:55	Officers Mathis/Cardoza and paramedics exit elevator on 5th floor
	01:00:10	Paramedics enter elevator on 5th floor with Moore on gurney

March 25, 2013

About 1630 hrs, I emailed Edward Sterling requesting contact.

To date, I have been unable to identify "Angel." To date, Edward Sterling has not responded to my requests for contact.

April 23, 2013

About 0940 hrs, I received the completed Coroner's report via facsimile.

In summary, the investigator determined the manner of death to be accidental. Dr. Beaver (Pathologhist) determined the cause of death as acute combined drug intoxication.

In his report, Dr. Thomas Beaver, M.D., Pathologist, Alameda County Coroner's Office listed the following findings. Xavier Moore suffered from "acute combined drug intoxication." Moore had an enlarged heart (Cardiomegaly). "Postmortem toxicological analysis of leg vein blood demonstrated methamphetamine and codeine at toxic levels."

Dr. Beaver opined that Xavier Moore's "...death resulted from acute combined drug intoxication with a contribution from morbid obesity and intrinsic cardiovascular disease."

At the time of autopsy, Dr. Beaver verbally stated there was no trauma to the body exterior or interior organs/parts (e.g. brain, lrynx; lung). The only visible injuries were contusions to the wrists which were "insignificant" and normal due to handcuffing. Dr. Beaver's final report (External Examination) supports the same conclusion.

Conclusion(s):

Penal Code 834. Arrest defined; persons authorized to arrest – An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Penal Code 834a. Resistance to arrest – If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code 835. Method of making arrest; amount of restraint – An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

Penal Code 835a. Use of force to effect arrest, prevent escape, or overcome resistance – Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Welfare and Institutions Code 5150. Dangerous or gravely disabled person; taking into custody; application; basis of probable cause; liability — When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county and approved by the State Department of * * * Social Services as a facility for 72-hour treatment and evaluation.

Penal Code 69. Obstructing or resisting executive officers in performance of their duties; attempts; threats; violence; punishment – Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law,

or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by...

Based on the facts in this investigation, I believe the involved officers were clearly identifiable as police officers with the city of Berkeley; the involved officers had the authority and probable cause to take Xavier Moore into custody for the outstanding warrant and for a WI 5150 evaluation; and, the physical force used to overcome Moore's resistance and to effect the arrest of Moore was reasonable.

Based on the facts in this investigation, I believe Xavier Moore was in violation of California Penal Code 69.

IN THE SUPERIOR COURT OF THE OAKLAND-PIEDMONT-EMERYVILLE JUDICIAL DISTRICT COUNTY OF ALAMEDA, STATE OF CALIFORNIA

STATE OF CALIFORNIA

SEARCH WARRANT

COUNTY OF ALAMEDA

REGISTER NO.

ARREST NO.

The People of the State of California, to:

ANY PEACE OFFICER IN ALAMEDA COUNTY

Proof by affidavit, having been made before me on this date by Officer Jesse Grant, Berkeley Police Department, Berkeley, California, that there is probable and reasonable cause for the issuance of the search warrant as set fourth in the said affidavit.

YOU ARE THEREFORE ORDERED TO MAKE A SEARCH on and in the premises, structures, rooms, receptacles and safes situated at: 2116 Allston Way Apartment 514, Berkeley, California, 94710

and the vehicle[s] described as: None,

and the person[s] of: None

for the following property and things consisting of: any and all bodily fluids from Xavier Moore or other parties, any and all alcoholic beverages specifically gin and/or vodka, any and all medication in the name of Xavier Moore, any and all illicit drugs including rock cocaine and Methamphetamine,

indicia of control of said premises/property to include, but not limited to: an officially issued drivers license or identification card, rental agreements, telephone or utility billing statements, mailing envelopes providing evidence of delivery and postage cancellation, imprinted bank-checks or banking statements, other personal papers and/or authentication statement[s] of duly authorized records custodians,

and if you find the same or any part thereof, to bring it forthwith before me or this court, or to any other court in which the offense in respect to which the property or things seized is triable, or retain such property in your custody, subject to the order of this court pursuant to Section 1536 of the California Penal Code.

Time of issuance: 12:20

NATURE OF MAGISTRATI

Date of issuance: 2-13-13 [Seal]P.C. 840, 1527, 1529, 1534, 1536, 1551, 1541

SUPERIOR COURT OF CALIFORNIA

County of Alameda





THE PEOPLE OF THE STATE OF CALIFORNIA

to any peace officer in Alameda County

Warrant	No		
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An affidavit, sworn to and subscribed before me on this date by Sergeant P. Hong #S27 of the Berkeley Police Department, has established probable cause for this search warrant, YOU ARE THEREFORE ORDERED to make search on and in the premises, structures, rooms, receptacles, safety deposit boxes and/or safes situated at:

Place(s) to be searched:

Alta Bates Hospital - Custodian of Records (2450 Ashby Avenue, Berkeley CA)

Property to be seized:

Emergency Room Medical Records for 13FEB2013.

Patient: Xavier Moore/DOB: 04-17-1971/SSN:

Any and All Medical Records for Xavier Moore/DOB: 04-17-1971/SSN:

Contained and incorporated by reference and attached hereto.

Disposition of Property: All property seized pursuant to this search warrant shall be retained in the affiant's custody pending further court order pursuant to Penal Code §§ 1528(a), 1536. Any item seized during the lawful service of this Search Warrant shall be disposed in accordance with law by the Berkeley Police Department upon adjudication of the case. The officers serving this search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been appropriately documented, photographed or otherwise identified with specificity. ______ (Magistrate's Initial's)

Night Service: In accordance with Penal Code § 1533 and People v. Kimble (1988) 44 Cal.3d 480, 494, I hereby authorize the execution of this warrant at any hour of the day or night. ______ (Magistrate's Initials)

Peace Officers or assigned representatives are authorized, during the execution of this Search Warrant, to video tape, photograph and/or take digital images, at the discretion of the searching officers, inside and outside of the location, any and all items and/or vehicles at the location, in addition, can identify and photograph and/or digital image all persons present at the search warrant location during the period of execution of this Search Warrant. ______ (Magistrate's Initials)

Date and time:

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Signature of Magistrate: $\frac{V}{L}$

endrop. V. Lanance

P.C. 840,1527,1529,1534,1536,151,154

103

SUPERIOR COURT OF CALIFORNIA

County of Alameda



SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA

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Warrant	No			
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An affidavit, sworn to and subscribed before me on this date by Sergeant P. Hong #S27 of the Berkeley Police Department, has established probable cause for this search warrant, YOU ARE THEREFORE ORDERED to make search on and in the premises, structures, rooms, receptacles, safety deposit boxes and/or safes situated at:

Place(s) to be searched:

Berkeley Fire Department Administration

2100 Martin Luther King Jr. Way, Berkeley CA

Property to be seized:

1) Patient Care Report XAVIER MOORE/ 13-0331

2) Patient Care Report XAVIER MOORE/ 13-1652

Contained and incorporated by reference and attached hereto.

Disposition of Property: All property seized pursuant to this search warrant shall be retained in the affiant's custody pending further court order pursuant to Penal Code §§ 1528(a), 1536. Any item seized during the lawful service of this Search Warrant shall be disposed in accordance with law by the Berkeley Police Department upon adjudication of the case. The officers serving this search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been appropriately documented, photographed or otherwise identified with specificity. _____ (Magistrate's Initial's)

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Date and time:	. 12		Signature of	Magistrate:	4.997	
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PAGES 105-110C WITHHELD

Three Search Warrant Affidavits Sealed by Court Order



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829 (510) 268-7300 / (510) 268-7333 (fax)

Investigator Narrative

Decedent:

MOORE, Xavier Christopher

Case Number: Investigator:

2013-00538 Karen Easling

First Call Information:

On Wednesday, February 13, 2013, about 0245 hours, Nurse R. MORENO of the Emergency Room (ER) at Alta Bates Medical Center-Ashby Campus called to report the death of Xavier MOORE. MOORE was transported to the hospital ER after he became unresponsive while Berkeley Police Department (BPD) officers were attempting to restrain him. Cardiopulmonary Resuscitation (CPR) was initiated by BPD. Berkeley Fire Department arrived, on scene, and continued life-saving measures while en route to the hospital. MOORE arrived unresponsive in the ER approximately 0110 hours. Hospital personnel continued life saving measures, without success, and death was pronounced by Dr. B. BONNES at 0134 hours. (KEE8410)

Medical Summary:

According to BPD, MOORE became unresponsive while officers were attempting to detain him for a psychiatric hold. While officers were struggling to restrain MOORE, he was face down, on a mattress, on the floor. Officers were able to handcuff MOORE, using two sets of handcuffs, due to his size. MOORE continued to resist after being handcuffed. An ankle strap was used to restrain MOORE's feet. Shortly after being restrained, MOORE stopped resisting and was moved onto his side by BPD. At that time, MOORE was breathing and had a pulse. About one minute later, MOORE became unresponsive. He was not breathing and officers were unable to find a pulse. Officers immediately removed the handcuffs from MOORE's wrists and moved him onto his back to begin CPR.

According to friends, at the scene, the decedent was under the influence of methamphetamines, alcohol, and marijuana. MOORE had been on a drug binge for several days and was behaving unusually.

According to MOORE's mother, Elysse PAIGE-MOORE, the decedent was a diagnosed paranoid schizophrenic. MOORE was obese, had breathing difficulties and high blood pressure. MOORE was transgender and taking estrogen. He also had a history of drug addiction.

Four vials of blood were collected from the hospital. (KEE8410)

Description of the Death/Injury Scene:

The decedent was pronounced in the ER of Alta Bates Medical Center- Ashby Campus.

About 0320 hours, Deputy M. AHLF #1708 and I (EASLING) arrived at the hospital ER and saw the decedent face up on a hospital bed with medical therapy in place. I conducted a general visual examination of MOORE and saw no signs of trauma. He was moved to a gurney and into the Coroner's van for transportation to the Coroner's Bureau.



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About 0440 hours, we returned to the Coroner's Bureau and processed the decedent into the morgue. I placed paper bags over the decedent's hands and secured them in place with zip ties. Intake photos were taken at this time. (KEE8410)

Body Identification:

The decedent was identified as Xavier MOORE based on a photograph located in the Consolidated Records Information Management System (CRIMS). The photo and general description matched the decedent. (KEE8410)

On Friday, February 15, 2013, I (BORDI) received a fax from the Central Identification Bureau (CIB) which stated the submitted fingerprints were compared to MOORE's associated personal file number (PFN) ATH177. CIB determined the fingerprints were a match. (EB1879)

Next of Kin Investigation:

The decedent was never married and had no children. His parents, MOORE, are his legal next of kin. (KEE8410)

Other Agency Reports:

Officer G. BROWN #16 of the Berkeley Police Department will be the primary investigator for this case with a report number of 13-8510. (KEE8410)

Property and Evidence:

The decedent and four vials of blood were collected and processed into the Coroner's Bureau. Receipt #33271 was issued. MOORE's property had been removed and secured in a plastic bag prior to my arrival at the hospital. I collected the property, one shirt, and secured it in evidence drying cabinet #3. (KEE8410)

Coroners Fees:

As of February 13, 2013, the Coroner's fees are for body preparation (\$67.00) and body removal (\$254.00) for a total of \$321.00.

I explained the roll of the Coroner's Bureau to MOORE's mother. (KEE8410)

Other Investigative Details/ Supplemental Information:

On February 13, 2013, Nurse R. MORENO called to report the death of MOORE. At that time MORENO had limited information, but he said MOORE was resisting arrest while being restrained when he became unresponsive. I contacted BPD dispatch and requested the officer assigned to the case contact the Coroner's Bureau. Officer G. BROWN contacted our office within minutes. Officer BROWN stated that BPD had been dispatched to MOORE's residence on a disturbance call. BPD attempted to place MOORE on a 72 hour psychiatric hold and he resisted. MOORE was restrained and became unresponsive. I asked Officer BROWN to fax a copy of her report to our office when it was complete.

According to the BPD police report, on February 12, 2013 officers were dispatched to MOORE's residence located at 2116 Allston Way in Berkeley. Officers arrived, on scene, about 2357 hours and contacted MOORE in the doorway of his residence. Officers attempted to detain MOORE for a psychiatric hold and MOORE resisted.



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On February 14, 2013, while performing an autopsy on MOORE, Dr. T. BEAVER, Chief Forensic Pathologist, and assisting staff located a broken glass pipe, commonly used for smoking methamphetamines and other illicit drugs, in MOORE's hair. The pipe was photographed and placed into evidence. (KEE8410)

Findings:

On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. BEAVER indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly. (KEE8410)

Supervisor Review:

On 04/23/13, I (Sgt. D. HARRIS) reviewed this case. I concur with the findings and approve this case for closure. (DH1113)



Case Name:

Moore,

Xaiver

TOXICOLOGY NUMBER: CVT-13-3018

28 ml femoral blood labeled "Moore, Xavier; 02/14/2013; 2013-00538"

Specimen Description:

Delivered by Tricor

Date 15-Feb-13

Received by Bill Posey

Date 15-Feb-13

Request: Complete Drug Screen

Agency Case #

2013-00538

Requesting Agency

Alameda Co. Coroner's Office Attn: Acct's Payable 480 4th Street Oakland CA 94607

Report To

Alameda Co. Coroner's Office Attn: Dr. Beaver

480 4th Street Oakland CA 94607

Specimen: Femoral Blood Sample

RESULTS

Complete Drug Screen: Methamphetamine and Opiates detected, No other common acidic, neutral or basic drugs detected. No blood Ethyl Alcohol detected.

d-Methamphetamine = 0.74 mg/L

d-Amphetamine

= 0.06 mg/L

Codeine

 $= 0.34 \, \text{mg/L}$

Morphine

■ Negative

Acetylmorphine

= Negative

Blood Methamphetamine Ranges

Effective Level:

(0.01 - 0.05 mg/L)

Potentially Toxic:

(0.2 - 5 mg/L)

Blood Codeine

Ranges

Effective Level: (0.01-0.25 mg/L) Potentially Toxic: (0.3-1 mg/L)

Blood Amphetamine Ranges

Effective Level: (0.02 - 0.15 mg/L)

Potentially Toxic:

(0.2 mg/L)

114

B. L. Posey

March 01, 2013

H.L. POSEY S.N. KIMBLE

1580 Tollhouse Road Clovis, Callfornia 93611 Phone (559) 323-9940

Fax (559) 323-7502

ALAMEDA COUNTY CORONER'S OFFICE

MA40:9 Ef02.82.314A

Alameda County Sheriff's Office

Coroner's Burcau 480 4th Street, Oakland, CA 94607-3829

Gregory J. Ahern, Sheriff

Director of Emergency Services Coroner - Marshal

MEMORANDUM

DATE:

February 14, 2013

FROM:

Thomas R. Beaver, M.D.

TO:

Case File 2013-00538

SUBJECT: AUTOPSY PROTOCOL

Autopsy performed upon the body of Xavier Christopher Moore at the Coroner's Bureau, 480 4th Street, Oakland, California, on February 14, 2013, at 9:40 a.m.

AUTOPSY FINDINGS

- I. ACUTE COMBINED DRUG INTOXICATION (SEE COMMENT):
 - A. HISTORY OF PHYSICAL ALTERCATION
 - B. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD REPORTS D-METHAMPHETAMINE = 0.74 MG/L, D-AMPHETAMINE = 0.06 MG/L, CODEINE 0.34 MG/L, MORPHINE = NEGATIVE, ACETYLMORPHINE = NEGATIVE, ETHYL ALCOHOL = NEGATIVE.
 - C. PULMONARY EDEMA, BILATERAL, ACUTE, MARKED.
- II. CARDIOMEGALY (800 GRAMS) WITH MODERATE LEFT VENTRICULAR DILATATION AND HYPERTROPHY:
 - A. INTRAMUSCULAR LEFT ANTERIOR DESCENDING CORONARY ARTERY.
- III, MORBID OBESITY, CHRONIC.

CARDIOVASCULAR DISEASE.

COMMENT: THE DECEDENT IS A 41-YEAR-OLD MORBIDLY OBESE MALE WITH SEQUELAE INVOLVING SEVERE CARDIOMEGALY, WITH LEFT VENTRICULAR DILATATION AND HYPERTROPHY, WHO BECAME UNRESPONSIVE DURING A WELFARE ENCOUNTER WITH LAW ENFORCEMENT PERSONNEL. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD DEMONSTRATED METHAMPHETAMINE AND CODEINE AT TOXIC LEVELS.

THEREFORE, BASED ON THE INFORMATION AVAILABLE TO ME AT THIS TIME, IT IS MY OPINION THAT THE DEATH RESULTED FROM ACUTE COMBINED DRUG INTOXICATION WITH A CONTRIBUTION FROM MORBID OBESITY AND INTRINSIC

Sheriff-Coroner Alameda County

Body of XAVIER CHRISTOPHER MOORE

CAUSE OF DEATH: ACUTE COMBINED DRUG INTOXICATION.

Other conditions: MORBID OBESITY; CARDIOMEGALY.

cc: EMS

District Attorney
Investigations Bureau

1	EXTERNAL	EXAMINATION

- 2 The body is that of an unembalmed, well-developed, morbidly
- 3 obese male appearing approximately the reported age of 41 years.
- 4 The length is 70 inches. The weight is 347 pounds. Rigor
- 5 mortis is present in the muscles of the jaw and extremities.
- 6 Livor is present over dorsal aspect of the body where it
- 7 blanches sluggishly to palpation.
- 8 There is prominent creasing of the earlobes bilaterally.
- 9 Cosmetic earlobe piercing is present bilaterally. The ears are
- 10 otherwise unremarkable. The head appears normocephalic. The
- 11 scalp is covered by long (up to 40 cm), dark brown hair, which
- 12 contains braided hair extensions. The eyebrows are
- 13 unremarkable. There is no crepitus to palpation over the bridge
- 14 of the nose. The irides are brown. There is prominent arcus
- 15 senilis. The palpebral and bulbar conjunctivae are congested,
- 16 consistent with the pattern of livor. There is drying artifact
- 17 on the eyes anterior. Specifically absent are petechiae. The
- 18 palpebral and bulbar conjunctivae are otherwise unremarkable.
- 19 The external nares are unremarkable. The masal septum is intact
- 20 and in the midline. The decedent's natural teeth are in good
- 21 repair. There are no chipped teeth. There are no broken teeth.
- 22 There is no evidence of trauma to the mucosal surfaces of the

- 23 oral cavity. The neck is symmetrical and well developed. The
- 24 trachea is palpated in the midline. There are no palpable
- 25 masses.
- 26 The chest is symmetrical and well developed. There is
- 27 prominent gynecomastia bilaterally. The abdomen is markedly
- 28 protuberant, firm and free of palpable masses. There are
- 29 numerous striae over the abdomen. The external genitalia are
- 30 normal adult uncircumcised male with both testes palpable in the
- 31 scrotal sac. There are no palpable masses. There is no
- 32 evidence of trauma to the external genitalia.
- 33 The lower extremities are symmetrical and well developed.
- Attached to the left great toe are two cardboard
- 35 identification tags bearing identifying information for the
- 36 decedent.
- 37 The upper extremities are symmetrical and well developed.
- 38 The fingernails are of medium length and irregularly trimmed.
- 39 There is a moderate amount of dirt beneath the fingernails.
- 40 There is no tissue or hair beneath the fingernails. There is no
- 41 tearing of the fingernails. Nail clippings are obtained.
- 42 The back is symmetrical and well developed. There is no
- 43 evidence of trauma to the anus.

44	EVIDENCE OF THERAPY: Protruding from the oral cavity is an
45	endotracheal tube. Cardiac monitoring patches (six) are
46	scattered over the torso and upper extremities. Defibrillator
47	electrode pads (two) are adherent to the right anterior chest
48	and left lateral chest. There is also a defibrillator pad
49	adherent to the left lower quadrant of the abdomen. Protruding
50	from the anterior aspect of the right lower leg is an
51	intraosseous catheter. Fresent on the left lower leg is a gauze
52	dressing that covers an intraosseous catheter. Protruding from
53	the dorsum of the right hand is a plastic vascular catheter.
54	Present on the dorsum of the left hand is a needle puncture mark
55	surrounded by a 3 x 3 cm area of apparent contusion. Attached
56	to the distal aspect of the left middle finger is a pulse
57	oximeter transducer. There is no other cutaneous evidence of
58	recent therapeutic intervention.
59	SCARS AND IDENTIFYING MARKS: Present on the right upper
60	quadrant of the abdomen is an indistinct irregularly shaped area
61	of hyperpigmentation containing multiple irregularly shaped,
62	variably sized scattered cutaneous defects in various stages of
63	healing. Some of these are crusted and centrally hypopigmented.
64	Similarly, present in the right inguinal area and extending onto

the right lateral hip are multiple scattered irregularly shaped,

- variably sized cutaneous excoriations which are crusted. 66
- are numerous striae in the areas of the shoulders and thighs, 57
- and axillary areas bilaterally. Present on the posterior aspect 68
- of the right upper arm is a 4 x 4 cm roughly circular scar. 69
- Present on the extensor aspect of the right forearm is a 5 \times 5 70
- cm irregularly shaped area of cutaneous scarring. There are no 71
- other convincing scars or identifying marks. 72
- EVIDENCE OF INJURY: Present on the wrists bilaterally are 73
- circumferential areas of abrasion and contusion. Photographs 74
- are obtained and subcutaneous dissection is undertaken. Present 75
- on the right posterior lower leg is a 3 x 5 cm area containing 76
- contusions and abrasions. Photographs are obtained. There is 77
- no other cutaneous evidence of recent significant injury. 78
- are no palpable fractures of the long bones of the lower 79
- extremities. There are no palpable fractures of the long bones 80
- 81 of the upper extremities.
- 82 INTERNAL EXAMINATION
- Through the usual Y-SHAPED INCISION, 10 cm of yellow 83
- subcutaneous adipose tissue and soft, red-brown musculature are 84
- revealed. The appendix vermiformis is intact and grossly 85
- unremarkable. The pericardial sac contains 20 mL of pale 86

- 87 yellow, clear fluid. There are no unusual odors. There are no
- 88 rib fractures.
- 89 CARDIOVASCULAR SYSTEM: The aorta is moderately dilated at
- 90 its root. The aorta is otherwise of normal course and caliber.
- 91 There are no atheromas or aneurysms present. The great vessels
- 92 have their usual anatomical relationships. The pulmonary
- 93 arteries appear patent and free of thromboemboli. The pulmonary
- 94 veins are grossly unremarkable. The vena cava is grossly
- 95 unremarkable. The heart weighs 800 grams. The epicardial
- 96 surface is smooth, glistening and red-brown with an abundant
- 97 amount of yellow subepicardial adipose tissue. The coronary
- 98 ostia are patent and give rise to a normally distributed
- 99 coronary arterial system, which is right dominant. The left
- 100 anterior descending coronary artery assumes an intramuscular
- 101 course during the distal two-thirds of its distribution. The
- 102 coronary arteries are thin, elastic, and free of
- 103 atherosclerosis. Serial sections through the myocardium are
- 104 firm and red-brown with no areas of softening or fibrosis.
- 105 There is circumferentially symmetrical left ventricular
- 106 hypertrophy with moderate dilatation. The left ventricular
- 107 myocardium measures 2.9 cm in thickness. The right ventricular
- 108 myocardium measures 0.5 cm in thickness. The cardiac valves and

- 109 chambers have their usual anatomical relationships. The valve
- 110 leaflets are thin and delicate, without vegetations. Sections
- 111 through the area of the conduction system are grossly
- 112 unremarkable.
- 113 RESPIRATORY TRACT: The patient has an endotracheal tube.
- 114 The trachea and mainstem bronchi are otherwise free of foreign
- 115 material. The mucosal surfaces of the trachea and mainstem
- 116 bronchi are grossly unremarkable. The right lung weighs 1060
- 117 grams. The left lung weighs 650 grams. The pleural surfaces
- 118 are smooth, glistening and pink-tan to red-brown. Serial
- 119 sections are spongy and pink-tan to red-brown with areas of
- 120 dependent congestion. There are no masses. Abundant frothy
- 121 liquid material exudes from the cut surfaces bilaterally.
- 122 Emphysematous changes are inconspicuous.
- 123 GASTROINTESTINAL TRACT: The esophagus is of normal course
- 124 and caliber. The serosal surface of the esophagus is grossly
- 125 unremarkable. The esophagus is free of foreign material. The
- 126 mucosal surface of the esophagus is grossly unremarkable. The
- 127 serosal surface of the stomach is grossly unremarkable. The
- 128 stomach contains 300 mL of viscous dark green-brown material, a
- 129 portion of which is retained. Medications are not identified,
- 130 The mucosal surface of the stomach is grossly unremarkable. The

131	serosal surface of the small bowel is grossly unremarkable. The
132	small bowel contains a moderate amount of yellow-green liquid
133	material. Medications are not appreciated. The mucosal surface
134	of the small bowel is grossly unremarkable. The serosal surface
135	of the colon is grossly unremarkable. The colon contains a
136	moderate amount of pasty green-brown fecal material. The
137	mucosal surface of the colon is grossly unremarkable.
138	HEPATOBILIARY TRACT: The liver weighs 2900 grams. The
139	smooth, glistening, red-brown capsular surface is intact.
140	Serial sections are firm and red-brown with preservation of
141	normal hepatic lobular architecture. Steatosis is not apparent.
142	Fibrosis is inconspicuous. Mass lesions are not identified.
143	The gallbladder is intact and contains 40 mL of viscous, dark
144	green liquid bile, a portion of which is retained. Stones are
145	not identified. The biliary tract appears free of obstruction.
146	HEMATOPOIETIC SYSTEM: The spleen weighs 230 grams. The
147	slate gray connective tissue capsule is intact and slightly
148	wrinkled. Serial sections are soft to gelatinous and red-brown.
149	There are no mass lesions. The lymph nodes and bone marrow are
150	grossly unremarkable.
151	ENDOCRINE SYSTEM: The right and left adrenal glands are of
152	normal size, shape and position. On cut section the cortices

153

Body of XAVIER CHRISTOPHER MOORE

are yellow and the meduliae are soft and gray. There are no hemorrhages or mass lesions. The pancreas is of normal size, 154 shape and position. The surface of the pancreas is grossly 155 unremarkable. Serial sections demonstrate preservation of the 156 normal pancreatic lobular architecture. There are no calcifica-157 tions or hemorrhages. The thyroid gland is of normal size, 158 shape and position. The serosal surfaces and cut sections are 159 grossly unremarkable. The pituitary is of normal size, shape 160 161 and position. GENITOURINARY TRACT: The right and left kidneys weigh 250 162 and 250 grams each, respectively. The capsules strip with ease 163 to reveal smooth, dark red-brown cortical surfaces punctuated by 164 occasional fetal lobulations. There are no cortical cysts. On 165 cut section the cortices and medullae are well demarcated in 166 their respective zones. There are no mass lesions. The renal 167 pyramids are grossly unremarkable. The caliceal systems are 168 grossly unremarkable. Stones are not identified. The ureters 169 are of uniform course and caliber. The serosal surface of the 170 urinary bladder is grossly unremarkable. 171 The urinary bladder contains no appreciable urine. Bladder washings are obtained. 172 The prostate gland is of normal size, shape and position. 173 The prostate gland is otherwise unremarkable. The testicles are 174

- 175 of normal size, shape and position. A biopsy is obtained.
- 176 There is no evidence of trauma.
- 177 HEAD: Reflecting the scalp demonstrates no abnormal
- 178 collections of extravasated blood within the soft tissues of the
- 179 scalp or over the surface of the bony calvarium. Reflecting the
- 180 temporalis muscles bilaterally demonstrates no abnormal
- 181 collections of extravasated blood. Reflecting the bony
- 182 calvarium demonstrates no epidural, subdural or subarachnoid
- 183 collections of extravasated blood. Skull fractures are not
- 184 identified. Discolorations of the bony calvarium are not
- 185 apparent. The superior sagittal sinus and all venous dural
- 186 sinuses appear patent and free of thromboemboli. The brain in
- 187 the fresh state weighs 1550 grams. From the vertex, the
- 188 cerebral hemispheres are symmetrical, without significant
- 189 atrophy or edema. The leptomeninges over the surface of the
- 190 brain and around the base of the brain are thin, clear and
- 191 delicate. Purulent exudates are not appreciated. There is no
- 192 herniation of the hippocampal unci or cerebellar tonsils. The
- 193 circle of Willis has its usual anatomical relationships. There
- 194 are no atheromas or aneurysms present. Serial coronal sections
- 195 of the cerebral hemispheres demonstrate no gross abnormality of
- 196 the gray and white matter. Mass lesions are not identified.

197	Hemorrhages are not present. Serial sagittal sections of the
198	cerebellum demonstrate preservation of the normal cerebellar
199	architecture. There is no gross abnormality of the gray and
200	white matter. Serial transverse sections of the brainstem and
201	midbrain demonstrate preservation of the normal architecture.
202	There are no gross abnormalities of the gray and white matter.
203	Mass lesions are not identified. Hemorrhages are not present.
204	Stripping the dura from the base of the skull demonstrates no
205	basilar skull fractures or bony deformities. Examination of the
206	superior cervical spinal canal upon flexion, extension and
207	rotation of the head demonstrates no fractures or subluxations.
208	NECK: The hyoid bone and thyroid cartilage are intact.
209	There are no abnormal collections of extravasated blood over the
210	surface of the hyoid bone or thyroid cartilage. Laminar
211	dissection of the strap muscles of the neck demonstrates no
212	abnormal collections of extravasated blood. The cricoid
213	cartilage is intact and grossly unremarkable. The larynx and
214	hypopharynx are free of foreign material. The mucosal surfaces
215	of the larynx are grossly unremarkable. The epiglottis and
216	vocal cords are grossly unremarkable.
217	The tongue is of normal size, shape and position. The

surface of the tongue is grossly unremarkable. Sections

219	demonstrate no abnormal collections of extravasated blood and
220	are otherwise unremarkable.
221	TOXICOLOGY SPECIMENS:
222	Leg vein blood is collected and submitted for toxicological
223	analysis.
224	Heart blood is collected and retained,
225	Vitreous is collected and retained.
226	Bile is collected and retained.
227	Gastric contents are collected and retained.
228	Bladder washing is collected and retained.
229	
230 231	· Az
231	Thomas R. Beaver, M.D.

233

TRB/jkm

PAGES 129-138 WITHHELD

Criminal History Information – Confidential Under State Law

BERKELEY POLICE DEPARTMENT

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STATEMENT TO INVOLVED OFFICER: you are being represented here at this interview by your attorney, HARRY STERN. You are not in custody and you are free to conclude the interview at any time. You are not obligated to answer any questions. Any answers you do give may be used in a court of law. Having this in mind, do you wish to voluntarily proceed with the interview?

HARRY STERN
ATTORNEY NAME

LEGATOR NAME

SIGNATURE SIGNATURE

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4		
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7		INTERVIEW WITH OFC. KENNETH TU
0		Q=Sgt. Hong
9		Q1=Dr. Johnson
10		Q2=(Sara) Burdick
11		Q3=(Harry) Stern
12	×:	Q4=(Jonathan) Murphy
13		A=Ofc. Kenneth Tu
14		
15		
16	Q:	It is, uh, February 13, Wednesday, approximately 1528 hours, which is 3:28
17	Ψ.	pm. This is Sergeant Hong, H-O-N-G, and in the room is, uh, um, Officer Tu,
18	9	along with others, they can introduce themselves.
19		
20	Q1:	Doctor Johnson, badge 26. J-O-H-N-S-O-N.
21	(-1	, ,
22	Q2:	(Sara) Burdick with (Rains), (Luchia), (Stern), B-U-R-D-I-C-K.
23		
24	Q3:	I'm (Harry) Stern, that's S-T-E-R-N.
25		
26	A:	Officer (Ken) Tu, uh, badge 28, last name's T-U.
27		
28	Q4:	(Jonathan) Murphy, M-U-R-P-H-Y, with (unintelligible).
29	•	
30	Q:	Okay. Okay, (Ken), um, just wanna confirm with you and your representative
31		that you signed the admonition.
32		
33	A:	Yes, I have.
34		
35	Q:	Correct? Waiver? All right. So - all right. So, (Ken), could you state your
36		rank and your badge number?
37		
38	A:	Police officer, badge number 38.
39		
40	Q:	What's your, uh, hire date? With, uh, Berkeley Police Department?
41		
42	A:	Uh, April 2007.
43		
44	Q:	Do you have any prior law enforcement experience?
45	#	

46	A:		No.
47 48	Q:		Which patrol operations team do you work for currently?
49 50	A;		Currently team four.
51 52	Q:		What are your normal days work and your normal hours work?
53 54 55	A:		Normal days work are Monday through Thursday, hours work are 2030 hours, which is 8:30 pm, to 6:30 am.
56 57	Q:		What was your, uh, call sign during the shift that - yesterday evening?
58 59	A:		4A3.
60 61	Q:		Now what area or beat is that assigned to?
62 63	A:		It's the north Berkeley downtown area.
64 65	Q:		Okay. Beat three?
66 67	A:		Beat three.
68 69 70	Q:		Okay. And your - team supervisors at the time of the - of yesterday's incident?
71 72	A:		Sergeant Phillips and Sergeant Huynh.
73 74	Q:		Huynh being, uh, H-U-Y-N-H?
75 76	A:		Yes.
77 78	Q:		Correct? Phillips, P-H-I-L-I-P-S?
79 80	A:		Yes.
81 82	Q:		Are - are they your normal supervisors?
83 84	A:	9	Yes.
85 86	Q:		Okay. Uh, when was the last shift you worked prior to yesterday's shift?
87 88	A:		Uh, the previous Thursday?
89 90	Q:		Okay. What were the hours you worked?

90			
91			
92	A :		8:30 pm to 6:30 am.
93			
94	Q:		Okay. Do you hold any secondary employment?
	Q.		Oldy. Do you note any bootstay on projection.
95			, , , , , , , , , , , , , , , , , , ,
96	A:	· ·	No.
97			
98	Q:		Did your work any overtime after the last shift and prior to this shift?
99	٧.		
			NT-
100	A:		No.
101			at the second se
102	Q:		Have you taken any medication, prescription or otherwise?
103			
	۸.		No.
104	A:		NO.
105			
106	Q:		Have you consumed any alcohol in the past 24 hours?
107			
108	A:		No.
	л.		110.
109	_		7. 1. 1. 1. 1. 0
110	Q:		Do you have any medical conditions?
111			a V
112	A:		No. I'm sorry, can I clarify one thing? Yesterday's shift was a - it's now
113	11.		Wednesday, right?
			wednesday, right:
114			
115	Q:		Yes. (Unintelligible).
116			
117	A:		I'm sorry. The shift I worked before was the - the day before, the Monday
	11.		before.
118			DETOIC.
119			
120	Q:		Right. Okay. The Monday before.
121			
122	A:		The same hours.
	11.		ino ballo no alo.
123	_		or TY 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
124	Q:		Okay. Um - when was the last time you slept? And how long and between
125			what hours did you sleep?
126		*	
127	A:		Uh, prior to this interview? Or prior to my shift last night?
	Λ .		On, prior to time into the or prior to may among a many and and a many among a many and a many and a many a
128	_		TT 1 1 1 1 0
129	Q:		Uh, how about both?
130			
131	A:		Uh, prior to this interview, I slept approximately one hour. Uh, since my last
132			shift, and prior to my previous shift, I slept approximately seven hours.
			ormen's array harvoy no real beautiful array and array arr
133	_		The second secon
134	Q:		From yesterday's incident, did you sustain any injuries?
135			

136	A:	No.
137		
138	Q:	Do you wear any corrective eyeglasses or contact lenses?
139	⋖.	
140	A:	No.
	А.	110.
141	0	Um - can you describe for me your duty year, on your belt, from, uh, your
142	Q:	om - can you describe for the your duty year, on your bert, north, un, your
143		front b- belt buckle going, uh, clockwise, how your assembly's made?
144		
145	A:	Clockwise, I have, um - from belt buckle, I have a - double set of handcuff
146		case, my duty firearm, my pistol, my ASP, my key holder, and then - on the
147		other side, I have my flashlight, my radio, baton ring, magazine notches.
148		
149	Q:	Okay. After yesterday's incident, uh, did your duty gear or duty belt sustain
	Q.	any type of damage?
150		any type of damage:
151		N
152	A:	No.
153		and the state of t
154	Q: -	Uh, regarding the vehicle that you drove yesterday, what vehicle make and
155		model were you driving during your shift yesterday?
156		
157	A:	It's a Ford Crown Victoria, uh, vehicle 1747.
158	11.	
159	0.	When I say yesterday, I mean - at the, uh, 12th of February, Tuesday evening.
	Q:	Which I say yesterday, I mean at the, they
160		Manuscripes shift
161	. A:	My previous shift.
162		- 1740
163	Q:	Previous shift.
164		
165	A:	Okay.
166		× ×
167	Q:	And what kind of markings and emergency equipment is on that vehicle your
168	ζ.	drove?
169		
7.0	۸.	Uh, full, uh, BPD markings, it's got the - black and white vehicle with the
170	A:	DDD -t-1d on the deers and a wighle light har
171		BPD shield on the doors and a - visible light bar.
172		- 11 11 d (1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
173	Q:	Do you normally drive that particular vehicle?
174		
175	A:	Yes.
176		
177	Q:	Are you a single officer or a double officer, uh, uh, vehicle?
178	Κ.	
179	A:	Single.
	r.	Single.
180		

INTERVIEW WITH OFC. KENNETH TU Interviewer: Sgt. Hong 02-14-13/4:30 pm Case # 2013-08510 Page 5

181 Q: 182 183 Uh - why don't we, uh - at this point, I'm gonna ask you about what you observed in terms of the incident scene. But before that, 'cause it may be, uh, already in your sub- in your report. Now do you have a report that you've completed regarding, uh, yesterday's incident?

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Yes.

188 Q: 189 All right. Okay. Uh - so - I'm just gonna read it out loud for the tape so we'll know exactly, uh, which report you're submitting. So - this, uh, report is a supplemental report by Officer Kenneth, K-E-N-N-E-T-H, last name Tu, T-U, that's Tom Union. And the report reads, "On 2-12-13 at approximately 2357 hours, I responded to assist with a report of a disturbance between roommates at 2116 Allston Way, A-L-L-S-T-O-N, Allston Way, the Gaia apartment building. Gaia, G-A-I-A. I arrived on scene with Berkeley police officers (Brown), badge 16, and Smith, badge three. We contacted the reported party, Hayes, H-A-Y-E-S, in front of the building. Hayes reported that his roommate, Moore, M-O-O-R-E, was - was schizophrenic and off his medication and had kicked him out of the apartment. Hayes stated that Moore needed to be placed on a 5150 hold. Hayes took us up to his residence, apartment number 514, Hayes opened the front door with this key, and Officer (Brown) called into the apartment from the doorstep. Moore same to the front door, and Officer (Brown) initiated conversation with him. I stood by as a cover officer to keep Hayes separated from Moore. During this contact, Moore came increasingly agitated and made numerous paranoid, rambling statements. Moore repeatedly stated that he was being followed by the FBI and that he did not believe that we were real police officers. During the investigation, Officer (Brown) placed Hayes under arrest for an active warrant and directed Officer Smith to transport him from the scene. Officer Smith placed Hayes in handcuffs and then escorted him downstairs to his patrol vehicle. I remained on scene with Officer (Brown). Officer (Brown) asked Moore to come outside to speak to him. Moore agreed and stepped outside of the apartment into the exterior walkway. Officer (Brown) then informed Moore that he was being detained for a warrant. Moore became extremely upset and was unresponsive to our verbal commands. Officer (Brown) then signaled me to attempt to detain Moore in handcuffs, so I grabbed him by the left wrist with both my hands. Moore immediately began screaming and violently pulling away and then back - and then ran back into the apartment, pulling Officer (Brown) and I in with him as we tried to detain him. A person later identified as Sterling, S-T-E-R-L-I-N-G, was inside the apartment living room at the time and for the safety of all parties present, Officer (Brown) directed him, Sterling, to leave the apartment. Sterling complied and went outside. Moore was able to pull himself out of my grasp and fell on his left side into the mattress in the living room. He th- he then began kicking me as I attempted to place his right arm in a control hold. I sprawled into - sprawled onto his hip in an attempt to prevent him from further kicking me and again -

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225

and gained control of his right arm by placing it in a rear wrist lock. Moore 226 rolled onto his stomach with this left arm under his body, preventing us from 227 controlling that arm. Officer (Brown) requested code three cover, and several 228 other BPD units responded to assist. Moore continued to violently resist by 229 trying to buck m- off - buck me off him, kicking me and trying to pull his 230 right arm away from me. After struggling for several minutes, we were able 231 to gain control of Moore's left arm and placed him in handcuffs. Due to his 232 size, we secured his arms behind his back with two sets of handcuffs. After 233 being secured in handcuffs, Moore continued to scream and quick. So other 234 BPD officers used the ankle strap of a wrap device, wrap, W-R-A-P, wrap 235 device to secure his ankles. Moore continued resisting for a short period of 236 time before appearing to calm down. Once he calmed, we rolled him onto his 237 side, and Officer (Brown) confirmed that he was breathing and had a pulse. 238 However, after approximately one minutes, Officer (Brown) reported that 239 Moore was no longer breathing and no longer had a pulse. We immediately 240 removed him from handcuffs and began CPR. I started compressions until 241 being relieved by Berkeley Fire Department paramedics. I escorted Berkeley 242 Fire Department paramedics as they transported Moore to Alta Base Hospital. 243 I stood by at Alta Base Hospital until being relieved by Officer Frankel, badge 244 26, Frankel spelled F-R-A-N-K-E-L." And that's the complete re-245 supplemental report? 246 247 248 Yes. A: 249 250 Q:

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Q:

A:

Q:

A:

Okay. All right. Could you describe for me the general description of the area in which this incident occurred?

Um - okay. 2216 Allston Way is a - it's a apartment building called the Gaia apartment building. It's a very large, multiunit, multiple floors over five floor apartment complex. Um - the - the floors are laid out in a - kind of a rectangular fashion, overlooking a courtyard. Um, the incident took place in apartment 514, which is on the fifth floor of the apartment complex. Uh, again, front door faces out to a exterior walkway, uh, with a railing that overlooks the, uh, the courtyard. Uh, the interior of the apartment, from what I saw, I - I only saw the living room of it. It - it was a - it's a hallway that leads down to a small kitchen and small living room. From what I remember, there was a mattress on the floor against - I mean, you're going in, the wall to the right, um, and I don't remember too much else about the interior.

Okay. Uh, do you remember if it - remember if it was a studio or a onebedroom or anything?

I believe it was a one bedroom. At least one bedroom.

Okay. About how far in did you go into the unit? When this - this occurred?

271		
272	A:	The hallway's approximately, I would estimate, maybe ten feet long, um, that
	A.	opens into the living room where the mattress is. Um, I went in - into the
273		hallway, and, um, as far as - as the bed, so the middle of the living room is
274		
275		where I was.
276		
277	Q:	About as far as you went in?
278		
279	A:	Yes.
280		
281	Man:	Is the mattress against the right wall the bed you're talking about that he fell
	IVIAII.	onto?
282		OHO:
283		**
284	A:	Yes.
285		
286	Q:	That's the bed that he fell onto?
287		
288	A:	Yes. I - I think there's a frame or anything. I think it's just a mattress on the
289	11.	floor.
		11001.
290	0	Ol II subsection?
291	Q:	Okay. Um - where was - Sterling, to your recollection?
292		1 1 1 1
293	A:	Uh, Sterling was sitting on that mattress when we were - when we went in.
294		
295	Q:	Okay. So - when you got there, was the door open already? Or did you guys
296	Χ.	have to knock?
		Hit of the History
297	A .	When we got there, it was closed. Um - the reporting party, Hayes, unlocked
298	A:	
299		the door and opened the front door.
300		
301	Q:	So Hayes unlocked the door and opened it for you?
302		
303	A:	Yes. He had his own key to the door, unlocked it.
304		
305	0:	And when the door opened, what did you see?
	Q:	And when the door opened, what did you are
306		Um - nothing at first, he opened the door, and then, uh, Officer (Brown) called
307	A:	Um - nothing at first, he opened the door, and then, un, officer (brown) states
308		out to Mr. Moore, the other involved party.
309		The second secon
310	Q:	What'd she call him? Do you recall?
311		
312	A:	I believe she called him by his first name, (Xavier).
313	. **	•
	0:	(Xavier)?
314	Q:	(1247101).
315		

316 317	A:		Yes.
318° 319	Q:	39	Okay. So Officer (Brown) called him. So what - what occurred thereafter - when that - after she called him?
320 321 322	A:		Officer - Officer (Brown) called out to Mr. Moore, and Mr. Moore came to the front door.
323 324 325	Q:		Okay. Um, did Officer (Brown) explain what the purpose of the police were there for?
326 327 328 329	A:	24	I believe so. She initiated conversation with Mr. Moore. I was - maybe six feet away between the doorway and Hayes, the reporting party, standing as a reporting party.
330 331 332	Q:		Okay. Were you able to understand and hear what Officer (Brown) was telling Mr. Moore?
333 334 335 336	A:		A little bit. She was - speakin' rather quietly, I mean, it's a huge apartment complex, we're not tryin' to have everyone hear, but - I could hear some of - of what - what they were talkin' about.
337 338 339 340 341	Q:		To the best of your recollection, and the - understanding you were - a- away, and she was whispering, any - anything you can recall as to what she was asking Mr. Moore or telling Mr. Moore?
342 343	A:		I believe I remember her asking Mr. Moore about what the issue was with the roommate, who lived in there, things like that.
344 345 346	Q:		Okay. Um - and then, uh - and then what happened after that?
347 348	A:		Um - so after that, they were both IDed at - identified at one point
349 350	Q:	ä	Okay.
351 352 353	A:		um - and the information was passed to, uh, Officer Smith, who began conducting record checks. Uh
354 355	Q:		When you say record checks, he's using his radio?
356 357	A:		Yes.
358 359	Q:		And he's use- he's doing what with his radio?

360 361	A:		He's, uh, providing the identifying information of both parties to our records bureau, uh, to provide - to do, uh - corpus and NCIC checks.
362	0.		So hale doin! NOIC manning hale doing warrant sheeks
363	Q:		So he's doin' - NCIC meanin' he's doin' warrant checks
364			W. A. J. J. and J. S.
365	A:		Warrant checks, probation status
366	_		1 1 6 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
367	Q:		based on first name, last name, birth dates, et cetera
368			
369	A:		Yes. Yes.
370			
371	- Q:		as standard radio procedure.
372			
373	A:		Yes. Got it. Okay. And then what did he find out?
374			A
375	A:		Um - at one point during this contact, I guess, uh, it was determined that
376			Hayes had a active warrant. Um - Officer (Gwen), uh, tasked, uh, Officer
377			Smith with confirming that warrant and then transporting her from the scene.
378			So Officer Smith took custody of Hayes, uh, and escorted him away from the
379			apartment and downstairs to his patrol vehicle.
380			1
381	Q:		Got it. And at this point, you and Officer (Brown) are still outside.
382	Q.		Got it. This at any point, you also carrot (220 they am a seem a
383	A:		Yes.
	A.	~	105.
384	Ο.		Got it. And - while you and Officer (Brown) are outside, from what I
385	Q:		· · · · · · · · · · · · · · · · · · ·
386			understand, Officer Smith left with Hayes
387			77
388	A:		Yes.
389			
390	Q:		to take him to jail for his active warrant.
391			
392	A:		Yes.
393			
394	Q:		Okay. Do you know - do you remember - do you know what the warrant was
395			for?
396			
397	A:		I was, um - I was on channel one, monitoring regular radio traffic, so I don't
398			know what the warrant was for.
399			
400	Q:		Okay. So - Mr. Hayes and Officer Smith is now gone.
401	۸,		
402	A:		Yes.
403	43.		
TUJ			

404 405	Q:	And the only remaining officers on the landing is you and Officer (Brown), correct?
406		5
407	A:	Yes.
408		
409	Q:	Okay. So what happened thereafter?
410		
411	A:	So once - uh, once Hayes was moved from the scene, um, Officer (Brown)
412		asked, uh, Mr. Moore if he could step outside a little further and talk to us just
413		outside the apartment, um, just outside the doorway.
414		
415	Q:	Mm-hm.
416		
417	A:	So Officer, uh - Mr Mr. Moore agreed and came outside and was standing
418		on the landing with us. Uh, at that point, uh, Officer (Brown), uh, informed,
419		uh, Mr. Moore that he also had a warrant and that he was gonna be a -
420		detained or arrested for that warrant. Um - Mr. Moore became - pretty upset.
421		It was - just - was yellin', "No," things like, "No," and things like, "I need to
422	183	call the FBI," and just makin' statements like that. Um - Officer (Brown) was
423		tryin' to - tryin' to talk him down verbally, just get him to calm down. He - he
424		wasn't - he wasn't listening, he wasn't calming, he wasn't listening to her
425		verbal commands or anything. So at that point, she signaled me to - to - try
426		and detain him in handcuffs, go hands-on with him.
427		
428	Q:	Okay. Can I interrupt?
429		Tab
430	A:	Um - so when, uh, Officer (Brown) told you that, um - she verbally told you
431		that Mr. Moore had a warrant?
432		
433	A:	I mean, she told Mr. Moore in my presence that he had a warrant.
434		
435	Q:	Okay. Do you know how she found out about the warrant?
436	`	
437	A:	No.
438		2
439	Q:	Okay. And - you said to the best of your recollection, when Mr. Moore found
440	`	out that he had a warrant, he became upset, correct?
441		
442	A:	Yes.
443		
444	Q:	Okay. And you said just a seconds ago that, um - that Mr. Moore was saying
		that he needed to call the FBI.
445		
445 446		
445 446 447	A:	Yes.
446	A:	Yes.

449	Q:	Okay.
450		II
451	A:	He was - throughout the contact, he was referencing the FBI, whether it be he
452		needs to call them or - being followed by the FBI.
453		
454	Q:	Okay. When you say that Mr. Moore was upset, was he - I mean, was he - fis-
455		was he showing the behavior of an upset person? Was he screaming, was he
456		
457	A:	Yes.
458		×
459	Q:	flaring his arms, (unintelligible)?
460		4
461	A:	He - he started to elevate his voice towards us. I wouldn't say at the time he's
462		screaming, but he's - definitely starting to get - more and more upset. Voice is
463		getting higher
464		
465	Q:	Okay.
466		
467	A:	getting louder, uh, waving his arms around in a
468		
469	Q:	Okay. So, uh, at - one - and at one point, Officer (Brown) asked you to do
470		what, take a hold of him?
471		,
472	A:	Yes.
473	11.	
474	Q:	Or - can you describe that?
475	۷٠	
476	A:	It - it was all nonverbal between Officer (Brown) and I, she - when it became
477	Α.	clear that Mr. Moore was not goin' to - calm down and comply with her verbal
478		commands, she - looked at me, nodded towards - towards Mr. Moore, just -
479		looked at me like this and - indicated like that.
480	41	TOOKOG AT THE TIRE WITH MICHORIDE THE THE
481	0:	Okay.
482	Q:	Ordy.
483	A:	That the - directed the head - 'cause the head shake towards Mr. Moore.
484	A.	That the - director the head - chase the head shake to wards 111 112 of the
	0.	Okay so you were - you basically showed that she basically - got your
485	Q:	attention, she, uh - sh- nod her head, and swaying it, in a fashion, telling you,
486		"Uh, we have to," in your interpretation was, "we have to handcuff this
487		person."
488		person.
489	۸.	Van
490	A:	Yes.
491	0.	Okay. And you knew what exactly what she was referrin' to, and so you
492	Q:	
493		moved in?
		4FD

494			
495	A:		Yes.
496	11.		
497	Q:		Okay. And what did you - what did you - when - when you said she - he
498	<.		wouldn't comply with her commands, what do you mean by her commands?
499			To calm down? Or - what commands?
500			
501	A:		Yeah, she was - she was - well, she was tellin' him he needed him to - well,
502	1 1.		she was askin' him to calm down, but she was also telling him, "Hey, Mr.
503			Moore, you need to - you need to come with us. You - you're gonna come
504			with us. We're gonna," basically, "You're gonna come with us." And, uh -
505			Mr. Moore's response to that was, "No, no, no."
506			Mar. Moore & Louis and Mar.
507	Q:		So when Officer (Brown) was tellin' Mr. Moore, "You're gonna come with
508	Q.		us," does that mean he's gonna have to go to jail?
509			us, does that most no s gomes and on So as J
510	A:	(4	Yes.
511	A,		105,
512	Q:		Is what she was telling Mr. Moore?
513	Q.		15 What she was tolling har hadde.
514	A:		Yes.
515	A		105.
516	Q:		Okay. And to your recollection, Mr. Moore understood what you guys were
517	Q.		saying?
518			saying:
519	A:	3	Oh, yes.
520	A.		On, yes.
	0.		There was no question that that's what Officer (Brown) was tryin' to, uh, tell
521 522	Q:		Mr. Moore, which was, "You have to go to jail on your warrant." Is that
			correct?
523			correct:
524	Α .		Yes.
525	A:		1 65.
526	0.		All right, I'm sorry I interrupted. So you moved in and you took a hold of him
527	Q:		a certain way.
528			a certain way.
529	Α.		I - I grabbed - so I used both my hands, and I grabbed Mr. Moore's right - uh,
530	A:		no, at that time - grabbed his left wrist, uh, I got a two-handed grip on his left
531			wrist. Um - I believe at the same time Officer (Brown) moved in as well and
532			engaged the other side of his body. As soon as I made contact with Mr.
533			Moore, he just started screaming, um - he was pulling away as hard as he
534			could, trying to flail his arms, and then he - started backing up and running
535			into the apartment. Uh - I was able to maintain my grip for a while, he just - I
536			couldn't stop him, he was so big. Just kept pulling us back into the apartment,
537			we're still holding on. We - he pulls us through that hallway, and w- we're
538			we to suit noturing on. We - no puns as an ough that many, and We -

539 540 541 542		coming towards the bed in the living room. At that time, I see Mr. Sterling sitting on the bed. Mr. Sterling immediately jumps up, runs to the other side of the room, uh, we come crashin' through, Mr. Moore breaks free of my grip, falls onto the bed, um, and just starts kicking at me.
543		
544	Q:	Kicking.
545	ζ.	11,01g.
	۸.	Yes, with his feet.
546	A:	res, with his feet.
547	0	Can I interrupt? So, uh - to your recollection, uh, what is Mr. Uh, Moore's, uh,
548	Q:	
549		gender?
550		
551	A:	Uh - Mr. Moore is a - is a male.
552		'
553	Q:	Mm-hm.
554		
555	A:	But - I believe he's a - transgender male? Or
556		9
557	Q:	Okay. Um - how tall was he?
558	ζ.	one). Our months are
559	A:	Maybe five nine, five ten?
	A.	waybe five fille, five tell.
560		Okay. How much you think he weighs?
561	Q:	Okay. How much you think he weighs:
562		III
563	A:	Uh, approximately 350 pounds.
564		
565	Q:	Okay. So he's a large man.
566		
567	A:	Yes.
568		
569	Q:	Okay what made you, uh, believe that he was transgender? What physical
570		appearances?
571		
572	A:	Uh, extremely high-pitched voice, um - and - just - I guess the - the - the facial
573	71.	features are starting - or - look - somewhat feminine, too, and the clothing he
		was wearing was a - was a skirt with a - like a wrap-around skirt and - and
574 575		kind of a tube-top upper top clothing.
575	U.	kille of a tube-top apper top croming.
576		D'11 1 of women up up women's make up on?
577	Q:	Did he have any type of women, uh, uh, women's make-up on?
578		
579	A:	No, he had long hair, and
580		
581	Q:	Long hair? How long?
582		
583	A:	I - I believe a little past the shoulders. Uh, not too clear on that.

0	1	
584		
585	Q:	Do you recall what the top and then the skirt looked like? To what was the -
586		what it was - what it looked - what was the description of his - top and the
587		skirt?
588		
589	A:	So the cop, again, is like a - a - light-colored, really thin material - uh - almost
590	11.	like a - a l- not a lace material, but a really, really thin material, tube top that
591		kinda went, uh, a little above the belly button to the upper chest. Uh, and the
		skirt was, uh, almost the same material, wrap-around skirt.
592		skirt was, mi, amnost the same material, wrap-around skirt.
593	^	
594	Q:	Okay.
595		A III
596	A:	That was
597		
598	Q:	Was there a certain color or pattern to it?
599		
600	A:	I don't remember a pattern, but - I - I just remember it was a lighter color,
601		maybe like a beige or - color, something like that.
602		
603	Q:	Right. How - how tall are you?
504	Α.	24644 220 W 200 W
605	A:	I'm, uh, approximately six three.
606	rı.	in, an, approximatory on the con-
	0.	Okay. How much do you weigh?
607	Q:	Okay. How inden do you weigh:
608	A	T 1. 1. 1. 1. 14!damanda
609	A:	Two hundred and thirty pounds.
610		
611	Q:	So you are, um - so, you know, so you're now on the bed, and he's starting to
612		kick.
613		
614	A:	Yes.
615		
616	Q:	That's where we left off.
617		
618	A:	Yes.
619	11.	,
620	Q:	Now up to that point, would you k- would you describe Mr. Moore as a strong
621	Q.	person?
		person:
622	A -	Ves
623	A:	Yes.
624	0."	Ol Wind and helions that he was the grame and officer
625	Q:	Okay. Would you believe that he was, uh, overpowering you and Officer
626		(Brown)?
627		
628	A:	Yes.

629		
630	Q:	Uh, so he's now laid down on this, uh, makeshift mattress that we described?
631		
632	A:	Yes.
633		
634	Q:	Is he on his stomach or on his back?
635	•	
636	A:	He's facing the wall, so he's on his left side.
637	11.	The billiaming that work, be not be a substitute to the substitute
638	0.	Okay.
	Q:	Ordy.
639		At at the initially with an he first fall days
640	A:	At - at the - initially, when he first fell down.
641		
642	Q:	And you said he was kicking at you.
643		
644	A:	Yes.
645		
646	Q:	Um - all right, so go ahead and continue.
647		4
648	A:	So - at that point, now that he's down, um, to prevent him from kicking me,
649		uh, I sprawl on top of his hips. So - by sprawl, I - I put the - my entire upper
650		torso on his hips, and that allows me to kinda control his legs and his hip to
651		keep him from, you know, thrashing too much and kicking me in the chest and
652		legs anymore. Um, once I'm in that position, I kinda have a good reach to his
653		right arm, 'cause it's right in front of me, so I'm able to grab his right arm,
		force it behind him, and I - I'm able to - to get into a rear wrist lock. So now
654		
655		I've got control of his right arm. Um - at some point, he - he r- he rolled onto
656		his stomach, and his left arm is underneath him, um, and he's not - he's not
657		
		givin' it up. So Officer (Brown) can't access that arm. Both my arms are tied
658		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer
658 659		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several
		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer
659		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist.
659 660 661	O:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist.
659 660 661 662	Q:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several
659 660 661 662 663		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside?
659 660 661 662 663 664	Q: A:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist.
659 660 661 662 663 664 665	A:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes.
659 660 661 662 663 664 665 666		up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside?
659 660 661 662 663 664 665 666 667	A: Q:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well?
659 660 661 662 663 664 665 666 667 668	A:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well? Uh, actually, almost immediately, once he popped up, um, Officer (Brown)
659 660 661 662 663 664 665 666 667 668 669	A: Q:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well?
659 660 661 662 663 664 665 666 667 668 669 670	A: Q: A:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well? Uh, actually, almost immediately, once he popped up, um, Officer (Brown) directed Sterling to - to go outside.
659 660 661 662 663 664 665 666 667 668 669 670 671	A: Q:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well? Uh, actually, almost immediately, once he popped up, um, Officer (Brown)
659 660 661 662 663 664 665 666 667 668 669 670	A: Q: A:	up, I can't help her at all as far as tryin' to restrain the other arm. Uh, Officer (Brown) calls for a cover, I believe code three cover, and after several minutes, uh, several other Berkeley police units arrive to assist. Okay. Do you recall, um - so you and Officer (Brown) are the ones inside? Yes. Is - and Sterling's still inside as well? Uh, actually, almost immediately, once he popped up, um, Officer (Brown) directed Sterling to - to go outside.

cm 4			
674 675	Q:		Okay. Um - you and Officer (Brown) are inside, and who are the other
676	Q.		officers that came in, um - um - to assist you? Do you recall?
677			
678	A:		Um - the very first one to come in, I believe, was officer Smith, and then after
679			that, I remember Officer Mathis, Gardner, and Castimiler. Um - I - I don't
680			remember anyone else.
681	0		Okay. So you remember inside the apartment with you and Officer (Brown)
682	Q:		is Officer (Brandon) Smith, S-M-I-T-H; Officer (Brian) Mathis, M-A-T-H-I-
683 684		· 10	S; Officer Tim Gardner, G-A-R-D-N-E-R; and Officer Castimiler, C-A-S-T-I-
685			M-I-L-E-R, Castimiler, correct?
686			Will be to, Submitted, Collect.
687	A:	51	Yes.
688			
689	Q:		And those are the, uh, four additional officers you recall being inside the
690			apartment, uh, with you and Officer (Brown) as you guys were, uh, fighting
691			with, uh, as you guys were struggling with off - um, Mr. Moore, correct?
692			91
693	A:		Yes.
694	0		So have did your grown arount valler take control of him if if you did so?
695	Q:		So how did you guys eventually take control of him, if - if you did so?
696 697	A:		Um, we were able to - once we got control of his arms, we used two sets of
698	A.		handcuffs to handcuff his arms behind his back. At one point, due to his
699			kicking, uh, the - the wrap was deployed, but only the ankle strap was used.
700			mounts, and the way the aspect of the second
701	Q:		Okay. So you were successful in handcuffing him.
702			
703	A:		Yes.
704			
705	Q:		And you guys used two sets.
706			m 1 11 14 1 1
707	A:		Two sets behind the back.
708	0.		Why?
709 710	Q:		Willy!
711	A:		Uh, due to his large size, we didn't wanna - you know, one set would not have
712	21.		been a viable option.
713			· · · · · · · · · · · · · · · · · · ·
714	Q:		So the handcuffs are completely, uh, on him
715	` /	5	
716	- A:		Yes.
717			
718	Q:		and now you are trying to restrain his legs.
			_

719		
720	A:	Yes.
721	Λ.	1 CS.
722	Q:	And with the, uh, ankle strap parse- portion of the wrap device, correct?
723 724	A:	Yes.
725 726	Q:	Were you guys able to, uh, secure and r- restrain his legs?
727 728	A:	I believe it - it was actually deployed to him.
729		
730 731	Q:	Other than being deployed, it was - he - he
732 733	A:	I mean, it was - used on him.
734 735 736	Q:	wrapped it - used on him. Okay. And so now I - is he still kicking - even though he's handcuffed, even though his, uh, legs are now - ankles are - are tied together with the strap, is he still physically resisting?
737 738 739 740 741 742 743	A:	Yeah, once - once he was secured, he - he still struggled. He was screaming and kicking briefly, um, and before - at least to me, it appeared he - he decided to - or he calmed down a little he stopped struggling so much. He stopped struggling. Uh
743 744 745	Q:	Okay.
746 747	A:	timewise - I really can't say how long it continued after - uh, it wasn't very long, but - he did continue after being secured.
748 749 750 751 752 753	Q:	To the best of your recollection, from the time that when you and Officer (Brown) went hands-on meaning you - you took physical hold of Mr. Moore to the time that he was now restrained in handcuffs, with - his ankles restrained, and he has now calmed down. Can you estimate how many minutes it was during that duration?
754 755	A:	Oh, gosh. Maybe - I'd say anywhere between three to five minutes.
756 757 758	Q:	Okay. So he's calmed down. Correct?
759 760	A:	Yes.
761 762	Q:	What did you guys do in terms of his positioning as he's calmed?

763 764	A:		Once he's calmed down, um, he's no longer kicking at us, we rolled him onto his side. Um - we rolled him onto his - left side.
765 766	Q:		Okay. And why did you do that?
767 768	A:		Uh, to prevent oxygen asphyxiation.
769 770	Q:		Okay. It's part of the training that you received?
771 772	A:		Yes.
773 774 775	Q:		Okay. And while he's on his left side, he's, uh - is he still calm now at this point?
776 777 778 779	A:		Yes, at this point he's - he's - he's - not responding to questions, but, um - I remember Officer (Brown) reporting that he was - did occur breathing, and chest was moving with breath, and he did have a - a - carotid pulse.
780 781 782 783	Q:	61	Okay. Did you at any time during the struggle, the three-to-five-minute struggle you had with Mr., uh, Moore, did you at all strike him in any way?
784	A:		No.
785 786	Q:		Open hand, closed-hand, no strikes?
787 788 789	A:		No.
790 791	Q:		Did you kick him in any way?
792 793	A:		No.
794 795	Q:		Did you use your, uh, OC spray?
796 797	A:		No.
798 799	Q:		Did you use your baton?
800 801	A:	~	No.
802 803 804	Q:		Did you - did you use any other, uh, um, item on your duty belt that is, uh, hard to strike him with?
805 806	A:		No.
807	Q:		Obviously, did you - you did not use your firearm?

808	Α.	No.
809	A:	140,
810	0.	Did you use the firearm in any way to, uh, his Mr. Moore?
811	Q:	Did you use the mount in any way to,
812		No.
813	A:	NO.
814	0	Did you see if Officer (Brandon) Smith used any type of strikes or kicks?
815	Q:	Did you see it Officer (Brandon) billian about any opposition
816		A C - I rouge mo
817	A:	As far as I saw, no.
818		Dil Office who Smith was I C?
819	Q:	Did you see Officer, uh, Smith use LC?
820		9
821	A:	No.
822		1 . 0
823	Q:	Did you see him use a baton?
824		
825	A:	No.
826		C11 + -1:+0
827	Q:	Did you see if Officer Smith ever used any type of blunt object?
828		
829	A:	No.
830		
831	Q:	Uh, from Officer Mathis. Did you see if he used any strikes or kicks?
832	ζ.	
833	A:	No.
834	11.	
835	Q:	Any OCs?
836	Q.	in the second se
837	A:	No.
	А.	110,
838	0.	Any baton use?
839	Q:	This batton as a
840	۸.	No.
841	A:	140.
842	0	Any other blunt objects?
843	Q:	Any other oran objects.
844		No
845	A:	No.
846		And I'll go back, and you did not see Officer Smith nor Mathis use their
847	Q:	
848		firearm in any way?
849		
850	A:	Correct.
851		ent 1 1 10
852	Q:	Their duty pistol?
		15

853			
854	A:	Correct.	
855	_	VII C OCC Coules 111 and the big of deploying any strikes or	
856	Q:	Uh, for Officer Gardner, did you see him you - d- deploying any strikes or	
857		kicks?	
858			
859	A:	No.	
860			
861	Q:	Any OCs?	
862			
863	A:	No.	
864			
865	Q:	Any baton use?	
866		v "	
867	A:	No.	
868			
869	Q:	Any other blunt object?	
870	Q.		
871	A: =	No.	
872	Λ.	140.	
		Any firearm use?	
873	Q:	Any meani use:	
874	۸.	No	
875	A:	No.	
876	^	II. Continuitor Officer Continuitor did you see any strikes	٥r
877	Q:	Um - second to last, Castimiler, Officer Castimiler, did you see any strikes	OI
878		kicks?	
879			
880	A:	No.	
881			
882	Q:	Any OC use?	
883			
884	A:	No.	
885		5	
886	Q:	Baton?	
887	-		
888	A:	No.	
889			
890	Q:	Uh, blunt object?	
891	٧.		
892	A:	No.	
893	4.2.	- 101	
894	- Q:	Any firearm?	
895	Q.	The state of the s	
	A:	No.	
896	л.	110%	
897		15	^

898 899	Q:	And lastly, for Officer, uh, (Brown), did you use - see her deploy any strikes or kicks?
900	A .	No
901	A:	No.
902	_	A OC2
903	Q:	Any OC?
904		
905	A :	No.
906		
907	Q:	Baton?
908		
909	A:	No.
910		
911	Q:	Any other blunt objects?
912		
913	A:	No.
914		
915	Q:	And, uh, her firearm?
916		,
917	A:	No.
918		
919	Q:	Okay. Was the struggle primarily - one last - on the bed itself, not on the
920		ground?
921		±
922	A:	It was almost entirety on the bed.
923	11.	20.000
924	Q:	On the bed. And at one point - at - at what point was he l- where was he laid
925	٧٠	on his side? On the bed or on the ground?
926		3.1
927	A:	On his side, he was, uh, still on the - on the mattress.
928	71.	Oli Ind Black, Me 11025, 1225
929	0.	Okay. Oh, so you kept him on the mattress the entire time.
930	Q:	Ordy. On, so you hept have on the
	A:	Yes. Yes.
931	A.	103. 103.
932	0.	Now, uh, we left off where, um - which officer checked to see he was still
933	Q:	breathing and he had a pulse and he was fine?
934		oreathing and he had a pulse and he was three.
935		Uh, Officer (Brown).
936	A:	Oli, Officer (Brown).
937	0	Officer (Brown)? Okay. As - time progressed, what occurred?
938	Q:	Officer (Diowif): Okay. As - time progressed, what occurred.
939		So - I'd say maybe - maybe about a minute after - after we rolled him onto his
940	A:	side, um - Officer (Brown) reporting that she didn't think he was breathing
941		any more, and she could no longer feel a pulse at the carotid.
942		any more, and she could no longer root a pulse at the carona.

042		
943		And the souledined this to exemple do
944	Q:	And she verbalized this to everybody?
945		••
946	A:	Yes.
947		
948	Man:	After about a minute? Is that what you said?
949		
950	A:	Yes.
951		
952	Q:	That's - um - after about a minute from what point?
953	Q.	That's and about a limited from what points.
	Α.	From rolling, uh, Mr. (Brown) - I'm sorry. After - a minute after rolling Mr.
954	A:	
955		Moore onto his side.
956		
957	Man:	That's what he said.
958		
959	Q:	Okay. A minute after - after rolling him onto his side.
960	•	
961	A:	Yes.
962		:
963	Q:	Correct. Okay
964	Q.	Odifoti. Okay
965	Man:	That's what he said.
	Man.	That's what he said.
966	_	G. d. and the observation of the array had a that the
967	Q:	So then, uh, now that Officer (Brown), n- announced to everybody that, uh,
968	25	Mr. Moore was not - Mr. Moore was not breathing and had no pulse, what did
969		you do? What did the officers do? Including yourself?
970		G
971	A:	Uh, we immediately removed him from handcuffs. Uh - moved him to his
972		back and onto, uh, the floor so we could - start CPR. I believe - I believe
973		Officer Gw- uh, (Brown) is the one who - uh - cleared his airway or checked
974		his airway, and then, uh, I began compressions.
975		
976	Q:	Okay. And you began compressions.
	٥.	Okay. This you began compressions.
977		V
978	A:	Yes.
979		D 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
980	Q:	Do you remember who, uh, released the handcuffs?
981		
982	A:	Uh, no, I don't.
983		
984	Q: -	Okay. Do you - was the legs still restrained?
985		
986	A:	I don't know.
987		2 N = _
/ 0 /		4.5

INTERVIEW WITH OFC. KENNETH TU

Interviewer: Sgt. Hong 02-14-13/4:30 pm Case # 2013-0851 0

Page 23

988	Q:	Okay. So, uh, Officer (Brown) is doing the, uh, airway, and you are doing the
989		compressions.
990		
991	A:	Yes.
992		
993	Q:	Do you recall who requested, um - it - was there at any point before this or up
994	ζ.	until now that the paramedics were summoned?
995		4
996	A:	I don't know.
997	71.	
998	0:	You don't know? Okay. Do you know - or do you recall hearing who - do
	Q:	you recall anybody requesting paramedics at this point?
999		you room mry body roquesting parameters in
000	- Kono	Uh, yeah, I don't remember who was, but I remember hearing the request over
001	A:	the radio for - for fire department.
002		the radio for - for the department.
003	(2)	Okay. And (unintelligible) do you recall the, uh, why the request was made
004	Q:	Okay. And (unificentiable) do you recall the, this way the request was made
005		over the - do you remember the words used by the
006	VI #1	
007	A:	I don't.
800		1 1 to fine regarding
009	Q:	Got it. But you, uh - but you - you recognized it was radio traffic regarding
010		the request for, uh
011		
.012	A:	Yes.
.013		
.014	Q:	, uh, Berkeley Fire Department paramedics.
1015	SS.5	
1016	A:	Yes.
1017		4
1017	Q:	Okay. About how long do you estimate you were doing chest compressions
1019	Q.	before the paramedics arrived?
1020		boloic the patients and the patients and the patients and the patients are the patients and the patients are the patients and the patients are
	A:	A few minutes, um - I - best guess, again, another maybe - another maybe
1021	A.	three to five minutes
1022		linee to five finitates
1023	0	Olcay
1024	Q:	Okay.
1025	.37	
1026	A:	of compressions.
1027		ar at C 1 1 and are added or rived
1028	Q:	Now the fire, ambulance - paramedics arrived
1029		
1030	A:	Yes.
₁ 031		
1032	Q:	and did they take over?
	18	

1033 1036 Q: All right. And - was, uh - and then was Mr. Moore, uh, taken by the paramedics? 1038 1039 A: Yes. 1040 1041 Q: Okay. So he was loaded up in to standard, uh, gurney, and they wheeled him away and took him a- took him down, et cetera, and took him to the hospital? 1043 1044 A: Yes. Yes. 1045 1046 Q: Okay. Were you still present when they, uh - when Mr. Moore was taken by the paramedics? 1048 1049 A: Yes. 1050 1051 Q: Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? 1052 there any supervisors on scene? 1053 1054 A: Yes. 1055 1056 Q: Who's on scene? 1057 1058 A: Sergeant Phillips - and Sergeant (Cardoza). 1060 1061 Cardoza) arrived? 1062 1063 A: I don't recall. 1064 1065 Q: Don't recall? Okay. Now, uh - what occurred, uh, to the best of your recollection after Mr. Phillip - Mr. Moore was taken and only the officers remained in the - what occurred - generally, what occurred after that? 1069 A: Um - I'm not sure, I got tasked with escorting the ambulance to the hospital. So 1070 1071 Q: Got it. 1072 Q: Got it. 1073 1074 A:I - I traveled down the ambulance to Alta Base. 1075 1076 Q: So you - you, uh, followed the ambulance.	1000		
Okay. So he was loaded up in to standard, uh, gurney, and they wheeled him away and took him a- took him down, et cetera, and took him to the hospital? Okay. So he was loaded up in to standard, uh, gurney, and they wheeled him away and took him a- took him down, et cetera, and took him to the hospital? Okay. Were you still present when they, uh - when Mr. Moore was taken by the paramedics? Okay. Were you still present when they, uh - when Mr. Moore was taken by the paramedics? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. Okay. After the paramedics left, um - scratch that. Um - at this point were there any supervisors on scene? Okay. Okay. Okay. Now, uh - what occurred. Occurred of the scene	1033		37
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1075 1076 Q: So you - you, uh, followed the ambulance.	1073		
No you - you, uh, followed the ambulance.	1074	A:	I - I traveled down the ambulance to Alta Base.
No you - you, uh, followed the ambulance.	1075		
		Q:	So you - you, uh, followed the ambulance.
		-	

1078	A:	Yes.
1079	0:	In your patrol vehicle.
1080 1081	Q:	in your partor vernore.
1081	A:	Yes.
1082	Λ.	
1083	Q:	To Alta Base?
1085	۷٠	
1086	A:	Yes.
1087	11.	*
1088	Q:	Um - and they - and then Mr. Moore was taken to the emergency room?
1089	۷.	•
1090	A:	Yes.
1091	100	
1092	Q:	Okay. Do recall, um, uh, uh, if - okay. And then after that, you stayed at the
1093	Α.	hospital.
1094		
1095	A:	Until relieved, yes.
1096	11.	
1097	Q:	Until relieved. Who relieved you?
098	٧.	
1099	A:	Uh, Officer Frankel.
1100	11.	
1101	Q:	Do you recall what - the time that you were relieved?
1102	ν.	
1103	A:	Uh, uh, approximately 0130 hours. A little after 0130.
1104		
	0:	Okay. And thereafter, you just returned to the station?
1105	Q:	Okay. And thereafter, you just returned to the station?
1105 1106		
1105 1106 1107	Q: A:	Yes.
1105 1106 1107 1108	A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first?
1105 1106 1107 1108 1109		Yes. Now can you describe what the - bed was like when you guys fell onto it first?
1105 1106 1107 1108 1109 1110	A:	Yes.
1105 1106 1107 1108 1109 1110 1111	A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground?
1105 1106 1107 1108 1109 1110 1111 1112	A: Man:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was -
1105 1106 1107 1108 1109 1110 1111 1112 1113	A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114	A: Man:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground?
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115	A: Man: A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor.
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116	A: Man:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117	A: Man: A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor.
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117	A: Man: A: Man:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor. Okay. Was a box spring? Or I - I don't think
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117 1118 1119	A: Man: A: Man:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor. Okay. Was a box spring? Or
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117	A: Man: A: Man: A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor. Okay. Was a box spring? Or I - I don't think it's stood - (unintelligible) close to the ground, or - (unintelligible)?
1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117 1118 1119	A: Man: A: Man: A:	Yes. Now can you describe what the - bed was like when you guys fell onto it first? Like - what - what - uh, was a frame to it, I think you said there wasn't - was - how far it was off the ground? Um - best of my recollection, I - I don't believe there was a frame, and I think the - the mattress was sitting on the floor. Okay. Was a box spring? Or I - I don't think

1123		
1124	Man:	Yeah, um - okay, and then you moved him off to - for when - when you
1125		removed the handcuffs, you put him on his back, and you removed him off the
1126		bed to the hard floor, to the carpeted floor when you guys started
1127		compressions? That
1128		
1129	A:	Yes.
1130		
1131	Man:	okay. Um - and then separately, I don't know if you already answered this,
1132		you don't need to reanswer it. Um - have you had a previous contact with Mr.
1133		Moore?
1134		
1135	Ä:	I can remember one previous contact, um, a while ago. Uh, it was a welfare
1136		check. Um - at a different address. And, again, I was a cover officer, so I
1137		don't remember too much, but I remember it was a - another welfare check, a
1138		5150 eval. Evaluation.
1139		
1140	Man:	Do you remember if he was transported?
1141	IVIMA.	1
1142	A:	Uh - he was not transported at that time.
143	11.	
1144	Man:	What about the, uh, other two parties, either of them, either Mr. Sterling or,
1145	IVICIII.	uh, Mr. uh, (Hayes)? Have you had contact with them previously?
1146		1
1147	A:	I don't - remember any previous contacts with them.
1147	Α.	Tuone Tomomoor any providing
1149	Man:	Okay. Thank you.
1150	Iviaii.	Okay. Thank you.
	0:	Um - actually, I have a quick question. Do you know why independent, uh,
1151	Q:	why based on radio traffic, based on what officers told you when you guys
1152		first arrived, why you were summoned there in the first place?
1153		mist arrived, with you were summoned there in the most place.
1154	۸.	To the address?
1155	A:	10 the address:
1156	0.	Yeah, to the address.
1157	Q:	reall, to the address.
1158	Α.	Yeah, we went there - initially, it was a - a - the initial call notes were like a
1159	A:	roommate disturbance, in the notes, uh, the roommate was - saying his, uh, I
1160		guess he got into an altercation - the reporting party reported he got into an
1161		altercation with his roommate, who was schizophrenic and off medications.
1162		ancication with his roominate, who was someopineme and off medications.
1163	0.	All right. And, um - are you, um - are you 11 5 50 qualified or DRE?
1164	Q:	All right. And, and - are you, and - are you it 5 50 quantion of 5 to 5.
165	۸.	No
1166	A:	No.
1167		

1168	Q:	Okay. Um, do you recognize based on your training experience when a
1169	8 6	person is under the influence of some type of narcotic substance?
1170		
1171	A:	Yes.
1172		
1173	Q:	Okay. Would you describe Mr., uh, Moore as being under the influence of
1174		some type of narcotic substance?
1175		**
1176	.A:	Appeared to be, yes.
1177	22.21	
1178	Q:	Appeared to be, okay. Um - would you describe Mr. Moore as having, um -
1179	Q.	being - having - drunk in any way, like the general object of symptoms of
1179		somebody under the influence of alcohol?
		Somebody under the influence of disorder.
1181	Α.	Uh - I didn't notice the objective - objective symptoms of alcohol, but I wasn't
1182	A:	Un - 1 didn't notice the objective - objective symptoms of aromot, but I waste
1183		really very close, paying super-close attention in the initial contact.
1184		of the state of th
1185	Q:	Okay. Do you recall inside the apartment in plain view if you saw any kind of
1186		contraband, illegal - legal items in the apartment?
1187		
188	A:	I don't.
1189		
1190	Q:	Okay.
1191		
1192	Man:	Were you advised at any point by any parties who were on careen whether
1193		there were weapons, uh, in the presence?
1194		
1195	A:	Not that I can recall.
1196	11.	
1197	Man:	Okay.
1197	Mari.	Okuj.
	02.	Did, uh - (Harry) Stern with a couple of questions. At any point, did Mr.
1199	Q3:	Moore express, uh, the fact that he was having trouble breathing or needed
1200		medical assistance?
1201		medical assistance:
1202		NT P
1203	A:	No.
1204		
1205	Q3:	And is it fair to say that during the course of the struggle, up unto a certain
1206		point, he was jelling or speaking or making noises?
1207		
1208	A:	He was screaming. Loudly.
1209		
1210	Q3:	Okay. And - can you pinpoint a place in time where that stopped, if it
1211	•	stopped?
1212		

		The state of the s
1213	A:	Um - it - it stopped when - he stopped screaming at the same time he stopped
1214		kicking and struggling.
1215		1 1 1 1 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4
1216	Q3:	And where - where was he placed - where was he physically at that point?
1217		Was he on his side, on his stomach
1218		
1219	A:	At that point, he was still prone on his stomach.
1220		
1221	Q3:	Okay. And did he continue - verbalizing at all once he was rolled onto his
1222		side in a position of recovery?
1223		
1224	A:	No.
1225		
1226	Q3:	Let me check something out. Was he put on his side - in response to
1227	Q3.	anything? Or as just part of the standard practice of how you handle suspects?
1228		anything. Of anyther of the times of
1229	A:	It's - pretty standard. It's - once they're not combative, put 'em on their side.
1230	Λ.	its plotty standard. Its ones and the standard standard standard standards.
	02.	At any point in time did you observe anyone placing their body weight on Mr.
1231	Q3:	Moore's upper body
1232		Woote's upper body
233	A	Times hady
1234	A:	Upper body
1235		117 1
1236	Q3:	while he was in prone position?
1237		
1238	A:	Not on the upper body.
1239		
1240	Q3:	Did it appear to you at least from your vantage point that based on his position
1241		and where the - officers were that Mr. Moore would be able to breathe?
1242		
1243	A:	I'm sorry, can you repeat that?
1244		
1245	Q3:	Sure. From your vantage point, where you - where you were, uh, during this
1246		struggle, could you - form an opinion about whether or not Mr. Moore could
1247		breathe, uh, when he was in the prone position?
1248		
1249	A:	He - he appeared able to breathe.
1250		
1251	Q3:	Okay.
1252	ζ	
1253	A:	And the fact that he was yellin' at us - kinda indicated to me that he was still
1254	¥.	breathing.
1254		~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
1256	Q3:	Which direction was his head facing? Was it tilted one way or the other or
1257	Λ 2*	straight ahead?
123/		on angue another

1258	A .	If I remember correctly, when he was prone, his face was tilted to his right.
1259	A:	If I remember confectly, when he was profite, has rase was saved as any
1260	02:	At any point, did anybody put any pressure on his neck or on his head?
1261	Q3:	At any point, and any body put any prossure on the second second
1262	۸.	No.
1263	A:	140.
1264	02.	I don't have any other questions.
1265	Q3:	I don't have any other questions.
1266	02.	Yeah, you - you were talking about, um - what Mr. Moore was saying
1267	Q2:	verbally around the time that Officer (Brown) informed him that he had a
1268		warrant, and he started getting more angry. What was he doing physically
1269		around that time?
1270		momit that time.
1271	5.4 A •	He was - he seemed real antsy, kinda fidgety, he was - he couldn't stand still,
1272	A:	was - was - kinda rockin' back and forth and stuff, movin' his arms around,
1273 1274		and - and lookin' all over. His
1274		and and lookin an over 12200
1275	Q3:	Was he sweating?
	Q3.	Was no sweating.
1277	A:	I don't remember.
278	A.	1 don't forficiatest.
1279	02.	That's it for me.
1280	Q2:	That's it for inc.
1281	03	Big (John)? Anything else you wanna add?
1282	Q3:	Dig (50im). This time of the state of the st
1283	۸.	No.
1284 1285	A:	140.
1285	0:	Thinkin'. Give me a - give me a second., uh - uh, you had a chance to speak
	Q:	with Mr. Hayes, the reporting party, correct?
1287		With Mir. Hayon, the reporting passy, seemen
1288 1289	A:	I - I didn't speak to him.
1299	A.	1 - 1 didn't speak to min.
1290	0.	Oh, you didn't speak to him at all. No conversation took place.
1291	Q:	On, you didn't openic to min at the
1292	A:	No.
1293	A.	140.
1294	Q:	Okay. Got it. Did you - did you question him in any way as to, uh, why he
1296	Q.	called or what was Mr. Moore's, uh, condition was et cetera, et cetera?
1297		(Unintelligible)?
1297		(Omnoring to to)
	A:	No. When he walked up, I just directed him to Officer (Brown), 'cause she's
1299 1300	Λ.	the handling officer.
		are manaring carreer.
1301	0.8	Got it. So you had no conversation with Mr. Hayes.
1302	Q:	Joe 11. 50 you man no conversation when any

INTERVIEW WITH OFC. KENNETH TU Interviewer: Sgt. Hong 02-14-13/4:30 pm Case # 2013-08510 Page 30

1303		
1304	A: -	No.
1305		
1306	Q:	Okay. All right. Um, concludes the interview with Officer Kenneth Tu, T-U,
1307		1615 hours, that's 4:15 pm, Wednesday, February 13.
1308		
1309		* H
1310	This transcript h	as been reviewed with the audio recording submitted and it is an accurate
1311	transcription.	
1312	Signed	

BERKELEY POLICE DEPARTMENT

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ATEMENT TO INVOLVED OFFICER: ficer Bran blathis, you are being represented here at this interview by er attorney, Savah Buval ich You are not in custody and you are free to iclude the interview at any time. You are not obligated to answer any questions. y answers you do give may be used in a court of law. Having this in mind, do you h to voluntarily proceed with the interview?

1		
2 3		
4		
4 5		
6		
7		INTERVIEW WITH OFC. (BRIAN) MATHIS
8		Q=Sgt. Hong
9	*!	Q1=Det. Johnson
10		Q2=(Sarah) Burdick
11		A=Ofc. (Brian) Mathis
12		
13	Ο.	Co Echanomy 12 Wednesday 1710 2:10 mm ab this ab an interview with
14 15	Q:	So February 13, Wednesday, 1710, 3:10 pm, ah, this, ah, an interview with (Brian) Mathis, Officer (Brian) Mathis and Case No. 13-08510. I am, ah,
16		Sergeant Hong, H-O-N-G.
17		bergeam Hong, H-O-IV-G.
18	Q1:	Ah, Detective Johnson. It's actually 5:10 pm. And that's Johnson, J-O-H-N-
19		S-O-N.
20	T	÷
21	Q:	That's right. For the record 5:10 pm.
22		
23	Q2:	(Sarah) Burdick with (unintelligible), last name B-U-R-D-I-C-K.
24	۸.	Officer (Driem) Methic Dodge No. 20, ab legt name is M. A. T. H. I. S.
25 26	A:	Officer (Brian) Mathis, Badge No. 80, ah, last name is M-A-T-H-I-S.
27	Q:	All right Officer Mathis you signed the, ah, the waiver. Correct?
28	۷٠	In right Officer Manie you begind they only the Maryer Conserve
29	A:	Yes I did.
30		
31	Q:	Okay. So Officer Mathis could you state your rank and badge number?
32		
33	A:	I'm a patrol officer and my badge number is 80.
34	0.	Cight Tono?
35 36	Q:	Eight, zero?
37	A:	Eight, zero. Correct.
38	11.	Eight, 2010. Collock
39	Q:	What was your hire date with Berkeley Police Department?
40		
41	A:	Um, June 12th or the 13th of 1999. And then my badge date is December
42		16th of 1999.
43		
44	Q:	And do you have any prior law enforcement experience before BP?
45		

46	A:	No I do not.
47 48	Q:	Ah, which patrol op- operations team do you work currently?
49 50	A:	Currently work team three.
51 52	Q:	All right. What are your normal days worked and your normal hours worked?
53 54	A:	I work Monday through Thursday from, ah, 1530 hours to 0130 hours.
55 56	Q:	What is your - what was your call sign during your shift yesterday?
57 58	A:	Ah, 3M6.
59 60 61	Q:	From here on out if I say yesterday I'm referring to, ah, February 12th. Okay? I'm sorry. What was your, ah, call sign?
62 63	A:	3M6.
64 65 66	Q:	3M6. Okay. Let's see. What area or beat were you assigned at that - yesterday's shift?
67 68	A:	I worked beat six.
69 70	Q:	Ah, let's see. Who were your supervisors y-during yesterday's shift?
71 72	A:	Ah, Sergeant, ah, Ross, S25, and Sergeant Cardoza, S31.
73 74 75	Q:	Okay. Sergeant Ross is R-O-S-S and Sergeant Cardoza is C-A-R-D-O-Z-A, S31.
76 77	A:	Correct.
78 79	Q:	Are they your normal supervisors?
80 81	A:	Yes.
82 83	Q:	When was your last shift prior to yesterday's shift?
84 85	A:	The day prior.
86 87	Q:	Got it. So today is, ah, currently Wednesday.
88 89 90	A:	Yes.
2753 5 6		470

0.1	0.	Yesterday's shift was Tuesday and so the day prior being?
91	Q:	resterday's sinit was ruesday and so the day prior being:
92 93	۸.	Monday.
93 94	A:	Wionuay.
9 4 95	0.	Monday. All right.
95 96	Q:	Wonday. An right.
97	A :	I'm sorry.
98	Α.	1 iii 3011y.
99	Q:	Have you taken any medication? Prescription or otherwise?
100	Q.	There you taken any medicanon. Tresemption of ourse.
101	A:	No.
102	74.	110.
103	Q:	Have you consumed any alcohol in the past 24 hours?
103	Q .	The you consumed any alcohol in the past 2. He are.
105	A:	No.
106	11.	1.00
107	Q:	Do you have any medical conditions?
108	Ψ.	Do you have only money and
109	A:	No.
110	21.	
111	Q:	When was the last time you slept, ah, and how long and how many hours, ah,
112	ζ.	so twice. Before this interview and, ah, before the time of incident?
113		
114	A:	Well it's - we'll work backwards. Ah, last night probably got - so from six,
115		six and a half hours last night. Um, and then the night prior. So going into
116		Tuesday that was probably seven and a half. Seven, seven and a half.
117		Something like that. It's my normal, you know, my normal - my normal work
118		week I usually get seven or so.
119		
120	Q:	Okay. Did you sustain any injuries during, ah, yesterday's incident?
121		
122	A:	No.
123		
124	Q:	Do you wear corrective eyeglasses or contact lenses?
125		
126	A:	No I do not.
127		
128	Q:	Ah, starting from the front of your belt buckle going clockwise could you
129		describe what duty gear is on your duty belt?
130		
131	A:	Ah, a set a cuffs, um, next is my service weapon, um, followed by my ass,
132		followed by a key holder, followed by another set of cuffs of which there
133		wasn't a second pair in there because an officer from the night prior did not
134	ж 2	return them to me. Um, that is then followed by a flashlight. Um, then a - a
135		canister of OC and then my, ah, ah, radio. And then, um, and I have - I have a

136 137 138 139	2.00	- I forgot to mention that I have a belt key holder or, ah, belt holders, um, spaced in between because they go around. Like, I, ah, and then the - I have a, um, a (unintelligible) ring for my baton and then, ah, magazine - two magazine pouch. And then buckle. (Unintelligible).
140 141 142 143	Q:	Did your duty belt or duty gear sustain any damage from yesterday's incident?
144	A:	No.
145 146	Q:	Ah, what vehicle make and model were you driving during yesterday's shift?
147 148	A:	Ah, Crown Vic and vehicle 1720.
149		What kind of markings and emergency equipment is on the - on the?
150 151	Q:	What kind of markings and omergency equipment is all all
152	A:	It's a fully marked standard BP patrol vehicle, um, black and white, ah, white
153		doors, um, with the logo on the side and, um, 360s on top. Two spots on - that
154		don't work real well but two spots in the corners.
155		
156	Q:	Ah, do you normally drive this particular vehicle?
157		
158	A:	Yes I do.
159		1 65
160	Q:	Were you a single officer car or a paired officer car?
161		
162	A:	S- single officer.
163		All the Al all might Olean New wa're going to um now that's the
164	Q:	All right. Ah, all right. Okay. Now we're going to, um, now that's the police report that you prepared for - regarding this incident. Correct?
165		police report that you prepared for - regarding this meddent.
166	۸.	Yes sir.
167 168	A:	i CS Sii.
169	Q:	Okay. Can I, ah, could you read that for us verbatim and that would be your,
170	Q.	ah, report for the record.
171		
172	A:	Okay.
173	1.0	
174	Q:	If you can read it for us.
175		
176	A:	Okay. Excuse me. On, um, 2/13/13 at approximately 0030 hours I heard
177		Officer (Brown), Number 16, broadcast a request for additional units at 2116
178		(Alsom), No. 514. Um, I responded code 3 to the scene. Upon entering the
179		apartment I observed Officer (Brown), Officer Tu, No. 38, and, ah, Officer
180		Smith, No. 3, struggling, um, to control a very large person on the apartment

floor. I grabbed both of the subject's ankles in an attempt to control the legs because the subject was kicking at the officers. I crossed - I crossed his ankles, um, trying to hold him down but got kicked off. I reacquired my grip and was - I reacquired my grip and was able to stop the subject from kicking. I was given an ankle restraint strap from the wrap and applied it the subject's ankles with assistance from another officer. I left the apartment to return to my patrol vehicle to retrieve, um, (unintelligible) and escort BFD upon their arrival. I heard a broadcast that CPR was being performed in the apartment prior to BFDs arrival on the scene. I accompanied BFD back up the stairs to No. 514. I was assigned by Sergeant Cardoza as 31 to attempt to contact residents of the surrounding apartments. At No. 515, which is the door to the west of 514, I got no answer. At 513, which is the door to the east of 514, I contacted roommates (Gabriella Carvello) - I believe it's pronounced and (Jorge Tolletto). Um, they both told me that they had been watching TV when they heard three loud thumps on the wall from 514 sometime around 2300 hours. The thumps were loud enough to startle (Carvello) and (Tolletto) but they heard nothing else over their TV until the police arrived sometime just after 2400 hours. (Tolletto) also told me that, "She," and then I put in res- um, referring to (Xavier Moore), um, "has knocked on my door a couple times and offered me recreational drugs." At, um, 512, um, which is the door to the east of 513, um, the residents told me that they had not heard anything until, "The police arrived." Um, I stood by as ID Tag Jamison, No. 452, took photos in 514 - in No. 514. When she was finished I locked the door and returned the keys to the BPD jail. Case disposition as said.

All right. All right. Um, I'm gonna s- start by asking you, um, about where were you when you heard the broadcast by, ah, Officer (Brown)?

Ah, Addison and MLK. I was westbound to Addison and MLK.

Okay. And do you recall the words used in the broadcast?

Just something similar that I put in the report. "We need additional units," or something and the tone of, um, Officer (Brown)'s voice and I could hear the struggle, you know, you can hear the sounds of struggle on the radio so I put two and two so. But it - I believe the words were similar. She didn't say code three cover. She said, "We need additional units here," or "Need more units here," or something like that.

And you responded?

I responded code three.

Code three?

219 220 Q:

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Q:

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O:

A:

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222 A:

224 Q:

223

225

226 227	A:		Yeah.
228 229	Q:		And, ah, you knew which apartment to go to?
230 231 232 233 234	A:		No I didn't in- initially, um, I knew where she was. I called the call up just to see where she was 'cause they actually assigned - assigned me although I was already rollin'. Um, so as I was coming up and I know where the (Guy) Building is - was pretty sure that's where she was. And I asked as I exited my vehicle what - what - what unit number.
235236237	Q:		Okay.
238 239	A:		And, ah, they told me 514.
240 241	Q:		Okay. Um, how did you gain entry into the main door?
242 243 244 245 246	A:	19	Ah, thankfully she or somebody, one of the officers had put a card in, ah, in the door to keep it - keep the door open and I was able to open the door and then I took a, ah, there's a bench stool just to the left as you walk in, I took that and, ah, wedged the door open and put it in the way blocking the door open for officers.
247			
248249	Q:		And so you made your way up to the apartment?
250 251 252 253 254	A:		Um, I called the elevator. I heard, um, other units coming code three and waited for and then the elevator took, you know, a considerable amount of time. And I - I know there's stairs in the building but I figured five floors, elevator. I waited - I waited for the other officers so when the elevator showed up two other officers came up and the three of us went up together.
255256257	Q:		Okay. The three of you who took the elevator, ah, who were they?
258 259 260 261 262 263 264 265 266 267	A:		I remember Officer Gardner which I believe his badge is 121. And I'm not sure of the - I - I - I'm not sure of the third officer. I don't know if it was Kastimiler or I don't remember who that third officer was. I just remember, um, that Officer Gardner being that first face that came runnin' through the door. And then, ah, like I said we got up - we got upstairs and then I remember him asking a black male who was standing at the railing who turned out to a caretaker or somethin' which apartment and he (unintelligible) said, "514." 'Cause you can't see the numbers on the doors. They're not on the doors. They're up
268 269 270	Q:		So you waited - you waited down in the elevator. Officer Gardner, G-A-R-D-N-E-R, Gardner, Badge 121, entered the, ah, el- elevator with you and but you don't quite remember the se- ah, the secondary officer.
210			176

271		*
272	A:	Yeah. I don't remember that third officer. I - I
273		
274	Q:	The third officer.
275		
276	A:	I don't remember who that third person was.
277		T
278	Q:	Okay. And you went upstairs and you went to the apartment. Correct?
279	Q.	Onay, Tind you wone appears and you wone to the aparenters.
280	A:	Yeah. I - I told them which door was gonna open, ah, which was the door -
281	Λ.	'cause I'm - I'm familiar with that building. And so I knew you enter in one
	×	door of the elevator and it opens onto the courtyard area which isn't open. So,
282		ah, (Tim) (unintelligible) Gardner, um, was the first out. I don't remember if
283		
284		I - I was the second one. And then we made our way into the apartment.
285	0.5	01 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
286	Q:	Okay. So when you went to the apartment was the door open or closed?
287		•
288	A:	It was open.
289		
290	Q:	Okay. When you went into the apartment could you give a general
291		description of the area in which this incident occurred?
292		
293	A:	Um, there was a - a - as - as you come in there's a, like, an entry area. It
294		turned out to be a bathroom to the, ah, to your immediate, um, left, which I
295		didn't - I didn't recognize as that coming in. And then the hall you take kind
296		of a half step. You have to kind of step around the door the way the door
297		opens in the entry. Kind of facing a little kind of open closet and - and then to
298		the right is where the hallway goes down into this main kitchen living room
299		area and that's - that's where they were. They were directly in line when you
300		come down that hall, um, it's really short
301		Como do tria tituta situa, situa, to a route, situado
302	Q:	Mm-hm.
303	Q.e.	IVIIII IIIII.
304	A:	um, they were right there. They were all - all down there on some type of
304	Α.	mattress or futon mattress or something like that.
		mattress of futon mattress of something fixe that.
306	0 =	To recommon Martin it Inched like some sort of mattrags or futur?
307	Q:	To your recollection it looked like some sort of mattress or futon?
308		The state of the state of the floor I do
309	A:	Y- yeah. It was on the floor. It a mattress that was on the floor. I do
310		remember seeing it, you know, laying on the floor.
311		
312	Q:	And when you - when you say there were all the other officers were there,
313		which officers were there when you arrived inside?
314		

315 316 317 318	A:	You know, I don't know who the other two - I - I know now after in hindsight and I know Officer (Brown) was there but I didn't see her. All I saw was a very large person that they were struggling with and getting thrown around. I mean I saw - I knew there were three officers there.
319 320 321	Q:	Mm-hm.
322 323 324 325 326 327 328 329	A:	I know that one larger officer which eventually I know to be Officer Tu was closest to the - the lower end of and was the one being - it was actually the one being kicked by the flailing legs. But they were all kind of gettin' bucked. I mean it was just - they were doing everything they could to control this large person on the ground. It was - and there was a lot of, you know, "Stop fighting, stop resisting." And I could hear all, you know, this other person yelling and screaming as well.
330 331 332	Q:	Okay. Ah, so when you arrived just for clarification, um, ah, at the - at, ah, so you - you remember now who they were but not - not before.
333 334	A:	I didn't know who - it was - in it. It's not real well lit.
335 336	Q:	Yeah.
337 338	A:	So it's not extremely well lit.
339 340	Q:	Okay.
341 342	A:	And you just see a mass.
343 344	Q:	Okay.
345 346 347	A:	It was just this - it's - it's literally I can tell, you know, that - that the officers are having a - a real difficult time at controlling this individual. Um, so.
348 349	Q:	Okay. Ah, but you do recall seeing Officer (Brown) inside you said?
350 351 352 353	A:	I - I don't know where she was. She was somewhere. I couldn't tell you one position she was - where she was holding. I - I instantly, um, as I usually - I'll - I'll go to where an area that I know that I can control on the body.
354 355	Q:	Okay.
356 357 358 359	A:	And take that and - and what I saw was causing a major problem were the feet. And then, you know, some big legs and they kickin' the officer and like I said with - with the use of the legs they were raising everybody up. So I figured if I controlled the feet

260		
360		26. 1
361	Q:	Mm-hm.
362		
363	A:	that would - and let the bulk of them take care of the upper body that - that
364		would be where I would be the most helpful. And that's what I went to deal
365		with.
366		
367	Q:	Okay. Um, knowing now which officers were there, could you name them
368	30	when you first arrived knowing now?
369		× ×
370	A:	I wouldn't be able to tell where they are.
371	A.	1 Wouldn't be able to tell where they are.
	0	Yeah but who - who were inside there?
372	Q:	1 can but who - who were inside there:
373	((() (11))	
374	((Crosstalk))	
375		The state of the s
376	A:	It was - it was Officer Tu, Officer Smith and Officer (Brown) - were the
377		officers that were - were inside the apartment.
378		· · · · · · · · · · · · · · · · · · ·
379	Q:	And that - and having thought back con- considering what you know now
380		having thought back, does that sound correct? That it was - it was Officer Tu
381		and Smith and (Brown) in there?
382		a a second and a second a second and a second a second and a second a second and a second and a second and a
383	A:	Yeah. I - I believe that's - yeah.
384		
385	Q:	Okay.
386	Q.	Ollay.
387	A:	'Cause I - I double checked - actually double checked with Officer Smith
	n.	because at - at some point how do you know if he had come in, I mean, there
388		± · · · · · · · · · · · · · · · · · · ·
389	2	were a lot of officers coming. And I was
390	9	
391	Q:	Sure.
392		
393	A:	I was doing everything I could to just control feet. So I'm looking down at
394		feet trying not to get kicked myself which I did.
		feet if ying not to get kicked mysen which I did.
395		leet hying not to get kicked myson whom I did.
	Q:	And, ah, were they - were they on the ground or were they on this mattress
395	Q:	
395 396	Q:	And, ah, were they - were they on the ground or were they on this mattress
395 396 397 398		And, ah, were they - were they on the ground or were they on this mattress futon deal?
395 396 397 398 399	Q: A:	And, ah, were they - were they on the ground or were they on this mattress futon deal? Well the mattress is on the ground, I mean, it's not much thicker. It didn't
395 396 397 398 399 400		And, ah, were they - were they on the ground or were they on this mattress futon deal?
395 396 397 398 399 400 401	A:	And, ah, were they - were they on the ground or were they on this mattress futon deal? Well the mattress is on the ground, I mean, it's not much thicker. It didn't appear to be a whole lot thicker than through this table.
395 396 397 398 399 400		And, ah, were they - were they on the ground or were they on this mattress futon deal? Well the mattress is on the ground, I mean, it's not much thicker. It didn't

404 405 406	A:	All right? It's very - it's a very thin, you know, I don't know, maybe four inches. I - I - I'd be - I'm guessing. I don't know.
408 407 408	Q:	Okay.
409 410 411	A:	Um, but they were all - it was all on the ground. It was all basically on the ground.
411 412 413	Q:	So you took a hold of his legs? Is that correct?
413 414 415 416 417 418 419 420 421 422 423 424	A:	I - yeah. I tried to grab, um, as I come in the legs are separate. So, like, I don't know, kicking in water. So they're separate, kicking. And I grabbed one, cross it over the other, and by the time I put it on top of the second one, I get kicked off. It - this person was very strong and kicked - kicked me off. So I reacquired my grip and this time took, um, like, I took my knee and just put more of my body weight over the top of the ankle so I think we went on - it's the right - so the person is laying down, it was the right over the left. So I put the right over the left ankle and then took my knee and both of my hands and placed them both on that right ankle to hold it down on top of him so I could keep them both from - from
425 426 427	Q:	And you - you're using your weight to keep it down but you're only grabbing the ankles?
428 429	A:	I only have the ankles. Ankles and feet.
430 431	Q:	Okay.
432 433	A:	I had, like, the back of the heel and the ankle.
434 435 436 437	Q:	Okay. Um, so what happens? So there's a struggle. It's going on. You're trying to assist by taking control of the feet or the ankles, um, ah, continue please as to what occurs, um, to the best of your recollection.
438 439 440 441 442	A:	Um, I don't know. I hear, um, I eventually hear - I know that, I mean, I don't know chronologically whether I get - the wrap comes in, um, and I get the strap and we - and I'll get to that, um, or that they get the cuff. I hear them say, "I got it." Like I got him cuffed.
443 444	Q:	So
445 446 447 448	A:	I hear - I hear somebody say that. But I'm not sure if it happens because it's happening - it - it's happening kind of to my - to my left. So, you know, and I'm focusing on what I've got there. There's enough people dealing with that. I'm focusing on my task.

449 450	0.	What - what was the body - what was, ah, the - when I say Mr. (Moore), Mr.
450	Q:	(Moore) is the subject that we're speakin' about that was resisting. Okay?
452		(4.2000)
453	A:	Correct.
454		era era arr
455	Q:	So when - when you were taking a hold of the ankles while others were, ah,
456		dealing with his hands, etc., and trying to get him handcuffed, what - what
457		was Mr. (Moore)'s body position at that time?
458		
459	A:	Ah, face down.
460		The Garage hall his face was down meaning his front of his hody
461	Q:	Face down. So was he l- l- his face was down meaning his front of his body
462		was on the ground?
463	- A .	His chest
464 465	A:	This chest
466	Q:	Or on the mattress?
467	Q.	
468	A:	his m- yeah. His chest was on the mattress.
469		
470	Q:	Mattress?
471		
472	A:	Yeah. That's why I kind of have to mind figuring which ankle was which.
473		that the same demands margares that
474	Q:	Okay. You said that you - you heard through messages, verbal messages, that
475		he was handcuffed.
476	TIEV .	Vach
477	A:	Yeah.
478	Q:	But you didn't actually see the handcuffs actually placed on him?
479 480	Q.	But you didn't detain, soo the manner of
481	A:	Mm-mm.
482		
483	Q:	Okay. Got it. And then - and then you were able to, ah, get a strap from the
484		wrap? Is that correct?
485		
486	A:	Yeah. I, um, I think it was Sergeant - it was either Sergeant Cardoza but
487		Sergeant Phillips also came in the room. Um, is that 17? I'm sure on her
488		badge number. We'll - we'll go over that. But Of- Sergeant Phillips - one of
489		the two had - I know that - I know the wrap came from her car because I put it
490		back together but, um, I said, "Give me the legs." I - I - I told specifically
491		whoever had it, "Give me the leg strap."
492	0*	Okay. So
493	Q:	Okay. Du

10.1		
494	Α.	Antila atron
495	A:	Ankle strap.
496	0	Sergeant - Sergeant Cardoza, C-A-R-D-O-Z-A, and Sergeant Phillips, P-H-
497	Q:	The state of the s
498		I-L-L-I-P-S?
499		n' 1.
500	A:	Right.
501		
502	Q:	Okay. And one of them gave you the straps?
503		
504	A:	Ah, either gave them the strap or they gave it to another officer at first when I
505		- and I don't know who this other officer was. And that officer, ah, put the
506		strap together so they made it a loop.
507		
508	Q:	Mm-hm.
509		
510	A:	And then I - they - they came down to try and help me put it on and I took it
511		from them. And, ah, because that's not the way to apply it. It's - it's too
512		difficult to do it that way. I took it from and instructed them to hold the
513		ankles while I, ah, applied the strap.
514		
515	Q:	Do you remember which officer this was?
516		
517	A:	I - I don't - I don't know. It was just a - a helping set of hands.
518		
519	Q:	Were you able to successfully, ah, restrain, ah, Mr. (Moore)'s, ah, ankles
520		
521	A:	Yes.
522		
523	Q:	with the strap?
524		
525	A:	Yes.
526		
527	Q:	Okay. All right. And then - and then what occurred? After the straps are
528		
529	A:	Um, the straps and the cuffs, you know, with the strap - he's still tryin' to kick
530		but now both legs are together and real easy to - can't get them apart so just
531		kind of stopped fighting.
532		
533	Q:	He stopped fighting?
534		
535	A:	Yeah. It was just pretty much - and that - that tends to be the case once they
536		can't - they can't flail around. They don't have anything - they kind of lose
537		the fight.
538		402
		4 O-7

539	Q:	Okay.
540 541	A:	So. It just kind of stopped fighting.
542 543	Q:	Let me backtrack just slightly. So, um, how tall and how heavy are you?
544 545	A:	Um, 6, just under 6'4" and I'm 245.
546 547	Q:	Okay. Would you consider yourself in shape?
548 549	A:	Yes.
550		
551 552 553	Q:	Okay. You said that, ah, that's just - Mr. (Moore) was able to basically have enough force to kick you away while you were just trying to grab his ankles. Is that correct?
554 555 556 557 558	A:	Yes. And I was - and I was using a fair amount of - of, ah, strength to do so because I - I could tell he was a big - I could see this was a very big person. Um, you know, kicking and a good-sized officer who's on the - on the back quarter of this individual so I - I knew that I - I needed to bring, you know,
559 560		bring some of my size and strength and pull him with it but, ah, I - I quickly found out that I needed to, you - you know
561		
561 562 563	Q:	Okay.
562 563 564	Q: A:	Okayuse - use a little more.
562 563 564 565 566	E	
562 563 564 565 566 567 568 569 570	A:	use - use a little more.
562 563 564 565 566 567 568 569 570 571 572	A: Q:	use - use a little more. Okay. Do you recall how tall and heavy Mr. (Moore) was? That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I
562 563 564 565 566 567 568 569 570 571 572 573 574	A: Q: A:	use - use a little more. Okay. Do you recall how tall and heavy Mr. (Moore) was? That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I don't know how tall.
562 563 564 565 566 567 568 569 570 571 572 573 574 575 576	A: Q: A:	use - use a little more. Okay. Do you recall how tall and heavy Mr. (Moore) was? That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I don't know how tall. Okay. But at the time you felt he was a large man?
562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579	A: Q: A: Q: A:	use - use a little more. Okay. Do you recall how tall and heavy Mr. (Moore) was? That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I don't know how tall. Okay. But at the time you felt he was a large man? I knew he was a three plus. Okay. So he - you knew at the time that you were struggling with Mr.
562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577	A: Q: A: Q: A: Q:	use - use a little more. Okay. Do you recall how tall and heavy Mr. (Moore) was? That I don't know. I - I have not had contact with that individual before and I - I - my guesstimate was, you know, once - once I s- saw later, over 350. I don't know how tall. Okay. But at the time you felt he was a large man? I knew he was a three plus. Okay. So he - you knew at the time that you were struggling with Mr. (Moore) that he was a three plus?

504		
584 585	Q:	All right. Um, when, ah, did you - do you recall, ah, if Mr. (Moore) was
586	Q.	during the struggle portion screaming, yelling in any way?
587		
588	A:	Yes.
589		
590	Q:	Do you recall what he was screaming and yelling?
591		
592	A:	Get off me. I remember hearing get off me a few - a few times. Stop. Get off
593		me. And that's just - just general screaming, like, you know, kind of, um, just - just screaming. I mean, you know, screaming, "Get off." There was a lot of
594		get off me and there was this just - just, you know, that, like, you know, you
595 596		know how sc- it's just a screaming. I don't know how to
590 597		KIOW HOW SO IT S Just a serealiming. I don't have a service a
598	Q:	Okay.
599	٧٠	y-
600	A:	really - just that
601		
602	Q: 11	Was he using profanity in any way?
603		
604	A:	I don't remember specifically. I don't - I wasn't really listening, you know? I
605		mean, you hear it, you hear certain things but you don't - I drown them out. I
606		listen - I listen to them. I didn't hear any - any - any complaining or anything
607		it was just - just struggle.
608	0.	Okay. Did you hear, ah, any of the officers give verbal commands in any
609 610	Q;	way?
611		way.
612	A:	Yes. Yeah. It was, "Stop resisting and give us your hands. Stop. Stop."
613	11.	You know. There - there was a constant - that was coming from several
614		people and I wouldn't be able to tell you who - which officers were doing
615		what.
616		
617	Q:	Okay. Um, do you recall how you - Mr. (Moore) was clothed?
618		- Car (ar) 1 1 I I I was sufficient down
619	A:	The only portion of Mr. (Moore)'s body I - I saw was from waist down.
620		Mar has
621	Q:	Mm-hm.
622	۸.	And it was naked.
623 624	A:	fulld it was liaked.
625	Q:	Waist down naked?
626	≺.	
627	A:	Waist down naked. Because I - when I looked up I had a pair of legs and then
628		I looked up and I saw bare butt.

629	0.8	Bare butt?
630 631	Q:	Date buit!
632	A:	Yeah. And that's - I couldn't see further. I didn't know what else, you know,
633	Λ_{i}	I just couldn't see beyond that. I wasn't lookin' - lookin' because I had my -
634		my job.
635		m, joo.
636	Q:	Okay. Um, now you said after the handcuffs were placed and you were able
637	ζ.	to successfully restrain Mr. (Moore)'s ankles, um, the fight was over for the
638		sake of, ah, expression
639		2
640	\mathbf{A} :	Yes.
641		
642	Q:	and continue from there on. What - what - what you saw.
643		
644	A:	Um, somebody - whoever, um, maintained the control of the ankles - whoever
645		that other officer was, I got up and, um, there was a - somebody requested a
646		spit hood so, um, with that I - I told - said, "I have them in my car." And so to
647		broadcast I stepped up, um, and stepped away from them and thought I told,
648		you know, anybody down that my vehicle, 1720, there's spit hoods in the
549		front of my duty bag which is in the passenger seat.
650		
651	Q:	Okay.
652	2	and the second s
653	A:	So it's - they're in the front of that. Um, and then, ah, didn't hear an
654		acknowledgement or anything so I said, "I'll - I'll go down and get them."
655		And, um, I believe there was - the FD was on its way so
656		
657	Q:	Okay.
658	A	um, I went. Yeah. I figured I'll go down and do - do two things. I'll get
659	A:	the spit hood and then I can bring the FD up with me. Um, that's what I did.
660		I left the apartment.
661		Tien the apartment.
662 663	0.0	Um, when he - when the struggle was subdued what - what was, ah, Mr.
664	Q:	(Moore)'s position while, ah, you guys were going for the - looking for the
665		spit hood, et cetera? What
666		
667	A:	Ah, it - at that time still he - he was, ah, still face down.
668	4 8.60	
669	Q:	Okay.
670	•	×
671	A:	I mean, this is all - this all happened pretty quick.
672		
673	Q:	Okay.
		105

C7 4		
674	۸.	Um, so I got up and I left once - and once, as I said, once there was no longer
675	A:	a fight everybody kind of was (unintelligible) came off him.
676		a right every body kind of was (unintering role) came our many
677		Olana Co
678	Q:	Okay. So
679		77 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
680	A:	You know, they weren't - wasn't
681		
682	Q:	So when you left he was still face down?
683		I am them tell that
684	A:	He was still face down but nobody was on him anymore. I can then tell that
685		he was not wearing any clothes or a sheet. I - I mean, read my statement. I - I
686		didn't really know. The only reason I put in his in there is my Sergeant last
687		night wanted me to change his ankles. And I - I - I honestly didn't know male
688		or female at that time.
689		E.
690	Q:	Okay.
691	ζ.	
692	·A:	I mean, I - I - it didn't matter. I, you know, 'cause, um, and, um, but, ah,
693	11.	yeah. That was the first time that I could see that this - this person was at - not
694		clothed at all.
695		
	0.	Okay.
696	Q:	Okay.
697	۸.	Um.
698	A:	Oill.
699	0	So when the request for spit hood was made and you try to relay a message
700	Q:	that you had some in your car but that wasn't being successful you decided to
701		just quickly run down to your car and get the spit hood?
702		just quickly run down to your car and get the spit hood.
703		T. 1
704	A:	Yeah.
705		
706	Q:	And - okay. And
707		** 1 ** T.C.1. T ** 1.1
708	A:	The scene was controlled so I felt I could.
709		The state of the s
710	Q:	During the struggle did Mr. (Moore) complain verbally in any way, ah, about
711		physical pain or having difficulty breathing, you know, anything or any of
712		this?
713		
714	A:	Not that I recall. Not that I heard.
715		
716	Q:	So you recognized that his was screaming and just basic- essentially saying,
717	×.11	"Get off me."
718		
, 10		100

719 720	A:	Yeah. Yeah.
721 722	Q:	What you - what you, ah, said before?
723 724	A:	Right.
725 726 727 728 729 730	Q:	Okay. Um, are you, um, at all, um, um, let me backtrack. Let me ask you this. So, ah, the officers who were there struggling with Mr. (Moore) at the time, right? And while you were struggling with Mr. (Moore), did you at all see any officer strike Mr. (Moore) in any way? Even with a hand or a closed fist?
731 732	A:	No.
733 734	Q:	Did you see any batons usage by any officers on the scene?
735 736	A:	No.
737 738 739	Q:	Was there any other form of impact weapons that were used that you may have seen officers use on Mr. (Moore)?
740 741	A:	Not that I saw.
742 743	Q:	Was OC deployed by any officer on the scene?
744 745	A:	No.
746 747	Q:	Was a firearm at all every used during this incident by any officer?
748 749	A:	No.
750 751	Q:	Was a firearm, ah, duty weapon used as an impact weapon in any way?
752 753	A:	Not that I saw.
754 755 756	Q:	Okay. Um, are you at all, um, certified in drug recognition or (DRE) certified?
757 758	A:	I'm not certified.
759 760 761	Q:	Okay. Are you - based on your training experience can you recognize somebody who is under the influence of - of, ah, illegal narcotics?
762 763	A:	Ah, yeah. With my basic - with my experience as an officer I'm pretty good at it.

808	Q:	Mm-hm. 188	3
805 806 807		when you're ground fighting you want to use your weight to - to help assist you to control that individual as much as possible.	
802 803 804	A:	Well, all I saw he was - he was tryin' to use - being a larger - he's - he's another officer of - of - who has size and weight. And in a struggle like that	
800 801	Q:	When you say he was laying on him, how could you describe what you mean by that?	
798 799	A:	Yeah.	
796 797	Q:	That was Officer Tu?	
794 795		I found out later that was actually - that was Officer Tu.	
791 792 793	A:	'Cause that - that was the only officer and the only reason I know that is because of the position they were in when they were getting kicked. And then	ı
789 790	Q:	Okay,	
786 787 788	A:	No. Like I said, the only one I know from (unintelligible) was Officer Tu and that was - he was along the - along the right side kind of laying along the side of him or on top of him.	
784 785	4	upper portion of Mr. (Moore)'s body?	
783		positioning of certain officers as they were trying to handcuff and control the	
781 782	Q:	Okay. Um, I know you said you were concentrating on ankles. Is there anywhere of your - any recollection on your part as to the position -	
780		0.0000000000000000000000000000000000000	
778 779		evaluation.	
777 778		of the cause. I don't know. But I didn't have enough contact to make that	
776 7 7 7		weight and strength that I used to cross those ankles is usually enough to handle most people. Um, this individual was, you know, maybe that was part	
775		what I'm doing and normally the amount of pressure and the amount of	
774	A:	Um, yeah. I'll say the amount of strength that, ah, normally I am - I - I know	
773	Q.		
771 772	Q:	Mm-hm.	
770		they were 550 or not.	
769	A:	I didn't have that - enough contact to - to make - to say, you know, whether	
768		daming experience that he was under the influence of anything:	
766 767		time that you were restraining him do you - could you say based on your training experience that he was under the influence of anything?	
765	Q:	Based on the amount of observation that you had of Mr. (Moore) during your	•
764			

809 810 811	A:	Or maybe help wear them out. There's - there's several different things that you can do. So you use every advantage you have. And when you're bigger,
812 813		you use that advantage.
814 815	Q:	Mm-hm.
816 817 818	A:	And that's kind of what he seemed to be doing was - was laying on him to try to use it as body weight to keep him down or to control him as - as he was.
819 820	Q:	Okay.
821 822	A:	That - that's what it appeared to
823 824 825 826	Q:	Got it. And to your recollection he was doing so because of Mr. (Moore) was not yet restrained in handcuffs? 'Cause he has not yet been restrained and he was control Mr. (Moore)?
827 828 829	A:	Yeah. That's - I - by - by what saw I didn't think there were any cuffs on at all.
830 831	Q:	Got it.
832 833	A:	All right.
834 835	Q1:	What part of Officer Tu was on what part?
836 837 838 839 840 841 842	A:	He's laying, um, his feet when I come in, um, the - the wall that I talked about as you walk down that hallway, ah, Officer Tu's pretty much on the (unintelligible) on - on the right side of him. Kind of on the right so Officer Tu's against the - the body on the - on the right side I g- I'm guessing. Um, but he was - he appeared to be more, like, tryin' to hold the hips and - and the upper torso down. That's what it appeared. I mean, it's
843 844 845	Q:	Did - did it appear that there was weight being put on the upper torso or just in the hip area or both?
846 847 848 849 850 851	A:	Well yeah. I mean, that's where his body was 'cause that's where the feet were coming up 'cause he was actually down on the hips. He was - his - enough of his body was down on the hips that he was kicked as, you know, as I said, that swimming - that swimming motion that the - that Mr. (Moore) doing was - was kicking or was bucking Officer Tu.
852 853	Q:	And where was it hitting Officer? Where - where?

854 855	A:		In the legs and - and legs and - and kind of lower - lower torso area. You know, he was just kicking his legs. Mr. (Moore) was kicking and bucking
856			him off.
			iniii Oil.
857			
858	Q:		Okay.
859			
860	A:	- Till 10	Yeah. It wasn't really necessarily somebody when you think kick you think it
861			involved a kick or a - a mule kick or something like that. It wasn't like that
			type of kick. It was more of a, you know, like I said, like a swimming, like a
862			
863			bucking action.
864			
865	Q:		Where - where - could Officer Tu's position was it - did it - could it in any
866			way - it couldn't effect how Mr. (Moore) was able to breathe being face
867			down?
			down.
868			NEW YORK THE TENTE OF THE PROPERTY OF THE PROP
869	A:		No. No sir. It - it didn't appear to be because he was yelling and screamin'.
870			
871	Q:		Okay. Ah, and - and again, you came in when the fight was already - had
872			already been begun. It was in the middle of it.
873			
874	۸ -		They had been goin' at it for a while.
	A:		They had been goin at it for a white.
875			O 1 1 11 C 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
876	Q:		So what ever happened before you, ah, ah, came, you wouldn't know what -
877			what kind of struggle Mr. (Moore) put up with anybody else.
878			
879	A:		Yeah. I don't. The only reason I know anything is - is - is conversations
880			afterwards.
881			
	0.		So, ah, so you hear the request for, ah, the spit hood and, ah, ah, you then ran
882	Q:		•
883			down to your car.
884			
885	\mathbf{A} :		Mm-hm.
886			
887	Q:		To get the spit hood.
888	4.		
	Α .		Mm-hm. Yes.
889	A :		IVIIII-IIIII. 103.
890	-		
891	Q:		Um, took the elevator?
892			
893	A:		Yeah.
894			
895	Q:		Okay. And you - you - where'd you park your car?
896	~ :		
	A =		I was right outside the front door. I mean, I was - I was the first car then. So
897	A:		
898			other - the other cars were - were sat in a more tactical position. The first

899 900 901		three people that were there nobody was parked in front. I - I slipped right in it - first to the scene.
902 903 904 905 906	Q:	Okay. (Unintelligible). One last - one real quick question which is while you were in the apartment during the struggle or at any time in the apartment, could you hear Mr. (Moore) say that he needs an ambulance or medical attention of any sort?
907 908	A:	No.
909 910	Q:	Okay. And so you're now down - I'm sorry. We'll take you back.
911 912	A:	Okay.
913 914	Q:	You're down at your, ah, car getting a spit hood. Did you hear any radio traffic that was of significance of or of a, um, that (unintelligible)?
915 916 917 918 919	A:	I heard, um, it was - it was noisy downstairs. There was - there was - it's traffic and things going on down there but I - I heard doing CPR and I kind of - I - I turned to somebody else down there and I said, "Did I - did you just hear that?" And the - then they confirmed, "Yeah. That's broadcast."
920 921	Q:	Mm-hm.
922 923 924	A:	So at - at that point I was just waiting for, ah, I still waited for BFD.
924 925 926	Q:	Okay. So you waited outside?
927 928 929	A: •	I still - I stayed by the door to make sure - that was still my - my job was to get them up there as far as I was concerned.
930 931	Q1:	So they can get into the building because
932 933	A:	Yes. I was gonna escort them through the doors, get to the
934 935	Q1:	Got to inspect them.
936 937 938	A:	Right. And then - and literally we did when - there was a bunch of kids gettin' off the elevator and I parted the sea to get them out of the way and give us a clear path to get in the elevator and get upstairs.
939 940 941 942	Q:	Okay. Um, so, ah, the - the radio broadcast you made regarding CPR, BFD eventually arrives and you escort them upstairs. Is that correct?
943	A:	Correct.

944 Now when you get upstairs now what kind of - what do you observe when 945 Q: you get upstairs? What did the Fire - Fire Department do? 946 947 Um. Officer Tu - I walked into the apartment and Officer Tu was, ah, well he 948 A: was really the only one I could see and he was doing CPR. Mr. (Moore) was 949 now, um, face up on the floor and they had actually, ah, rolled him, um, rolled 950 him on to the - he was off that mattress thing. So he was more in the middle 951 of the floor in the middle of the room. Um, and Officer Tu was doing CPR 952 when he traded out with a, ah, firefighter - one of the firefighters took over. 953 Um, I grabbed Officer Tu, ah, he kind of stood there for a second and I got 954 him out because it was hot, you know, and then I knew that he had already 955 been in a struggle and then he was doing CPR so I knew he needed to get 956 outside and I - I - myself and somebody else said to get him out. So we - we 957 walked him outside to get him some air 'cause he probably pretty spent. 958 959 Okay. And wh- and then that's when the c- um, paramedics started working 960 Q: on Mr. (Moore)? 961 962 Ah, yeah. I don't know from - when I saw the exchange stuff that was the last 963 A: because I took him. I'm sorry, Officer Tu, um, and got him out. I just - my 964 concern was now that the firefighters are there, like, figured they were on Mr. 965 Moore, like, I'm not of any use, I'm just in the way in there. So I just - I took 966 him and got him outside. 967 968 And you both went outside. 969 Q: 970 Well I took him too. Yeah. 971 A: 972 Okay. Um, at - at what point did you, ah, there's a lap in that. Wh- what 973 Q: was? 974 975 I stood, um, I just stood outside as kind of hall security just to make sure 976 A: nobody - there were b- a lot of people looking and watching and I just wanted 977 to make sure nobody, you know, there's - I didn't want anybody walkin' by 978 the door or anything. Interfering with anything that was going on in there so 979 I stayed out in the hall - I just stayed out in the - right in front of the door. 980 981 Other than, ah, the Officers Tu, Smith and (Brown) that you mentioned, or 982 Q: with (Gardner) because you came up with him, do you recall now any other 983 officers that may have arrived during your struggle, after - after the struggle, 984 while you were standing guard? 985 986 Well as I said, you know, Kastimiler I know was there 'cause I ended up 987 A: spending time with him. 988

989		
990	Q:	Okay.
991		
992	A:	But I don't know and - and now if I had to - I - I don't know what point he
993		was there. Like, he may have been the guy that came up - the third one. Um,
994		of - of course there were - there were other officers that showed up to assist,
995		um, I know somebody else, um, Officer McIntosh was doin', ah, help with the
996		area checks that we were eventually assigned to.
997		
998	Q:	Okay.
999		
1000	A:	Um, who else? Smith, um, oh, ah, Officer (Kaplan) was - I don't remember if
1001		he was actually there on the scene or he was downstairs to help trans-
1002		transport. I don't know if he was actually up on the scene now that I
1003		mentioned. No. He - he was there. I remember seeing his face.
1004	~	
1005	((crosstalk))	
1006	**	
1007	Q:	Kast- Kastimiler is K-A-S-T-I-M-I-L-E-R. McIntosh, M-C-I-N-T-O-S-H.
1008		Kaplan is K-A-P-L-A-N. I'm sorry. Go ahead.
009		
1010	A:	Glad you did it. I wouldn't have remembered.
1011		
1012	Q:	Okay.
1013		
1014	A:	Um, but, ah, that's, you - you know, as I - as I said, my - I don't - wasn't
1015		really anything that I worried about, you know, focusing on who was there. I
1016		wasn't keeping track of names or anything. That wasn't my job to do that.
1017		
1018	Q:	So, um, at - at - at a certain point in time, the, ah, fire and paramedics took Mr.
1019	_	(Moore). Is that correct?
1020		
1021	A:	Yes.
1022		
1023	Q:	Okay. And, ah, um, so they've - they've taken Mr. (Moore). And were they
1024		still working on him while they were taking him?
1025		
1026	A:	Oh they had a machine on him.
1027		
1028	Q:	Okay.
1029		
1030	A:	They had some kind of machine that was workin' on him the whole time so I
031		helped some. The only think I did - I did step back in as they were trying to
1032		get the gurney in and we need to get all that - that mattress stuff or whatever.
1033		It turned out that it was actually, like, two or th- two of them I think or

somethin'. And we stuffed them into the, um, Of- Sergeant Phillips' - somebody - either somebody was handing them to her or whatever and I kind of helped her stuff them into that, ah, it was actually a bathroom. (Unintelligible) just to clear the way so that they could get the gurney in and get him on the gurney. So. Oh and then they - they - I kind of turned and faced 'cause so a bunch of people to the east and so I kind of as he came out, I turned and faced so that they - makin' sure nobody else came and got (unintelligible).

Okay. And eventually you - you left. And so Mr. (Moore) was taken by the paramedics.

Mm-hm.

At what point do you leave the scene?

Um, not for a while. Um, because I'm - Sergeant Cardoza assigned me to do, ah, ah, check on the...

Canvas.

Yeah. I do a canvas but he specifically wants me to check on neighbors on either side and see if they heard anything specifically prior to our arrival. His - his instructions were make sure you - you find out not just them hearing what - what's with us but if they heard anything else prior to. Any kind of 415 because I think the original call there was - was some type of disturbance. So if they heard any disturbance or any arguing or anything prior to our arrival. So, um, the couple - the first couple that I spoke to were those ones that, um, um, was at 513. They were actually the first couple. Well I say 5on my report I say - I kind of went and did it the way I had it written but 515 I say no one home. But I actually contacted 514 fir- or 513 first because they were - there were there. I could see them. So I talked to them first and then I - I went over and checked 515 and there was answer. That one was dark. And that's why I kind of looked and it was dark and I didn't see anybody there so I - I took the one that I - I knew I had two warm bodies. And I went and talked to them first. Then I walked over 15 and then Sergeant Cardoza asked me to continue on. Um, and I knew there were also people in, ah, 512. So I went there but they - they were - they had just been sightseeing once we got there.

Okay. And, ah, what - what, ah, the folks from ah, ah, these addresses told you, it's reflected in the police report?

Yes.

1041 1042 1043

1044

1034

1035

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1038

1039

1040

1045 1046 A:

O:

1047

1048 Q: 1049

1050 A: 1051

1052 1053 Q:

054 1055 A:

107210731074

Q:

A:

1075 1076 1077

1079 1080 1081 1082	Q:	Okay. Um, so when you do- after doing that you, ah, according to the police report you stood by while, ah, Crime Scene Technician Jamison, J-A-M-I-S-O-N, took photographs of the apartment?
1082 1083 1084	A:	Right.
1085 1086	Q:	514?
1087 1088 1089	A:	I was assigned to security so he just told me to stand outside and let her do her thing and assist if everybody else needed anything. So.
1090 1091 1092	Q:	And the last portion of this report you say that when she - she - Tech Jamison finished you locked the door and returned the keys to BPD jail.
1093 1094	A:	Correct.
1095 1096	Q:	BPD jail. Return it to whom?
1097 1098 099 1100 1101 1102 1103 1104 1105 1106 1107 1108	A: Q:	Um, I gave them to one of the jailers, um, and I don't know this other party. I never saw him until that moment so I didn't - I had no contact. Apparently he was the roommate with this person so I - I have no contact with that individual. Those keys were brought out to me by Officer Smith. This was an individual that I later found out that Officer Smith had down in the car. (Unintelligible) and that he ran back upstairs I guess or somethin' when he heard the - the call for assistance. I - I'm not sure how that chronology worked. I don't know. I don't know how that worked out but he was - I remember - remember Officer Smith saying I got a guy in my car. I gotta go back down to my car. You know, but, yeah. Um, all right. So a couple follow up questions. So you never spoke to that
1109 1110 1111	Ų.	gentleman you gave the keys to. His name is Mr. (Hayes). You never gave him - you never had any conversation with him.
1112 1113	A:	Um
1114 1115	Q:	Before or after?
1116 1117 1118 1119	A:	No. You know what, and that - the only thing - I did say something to him, um, at, like, leaving - as I was leaving the jail because the caretaker, Mr. (Edwards) or something like that.
1120	Q:	No. (Sterling)?

1122	A:		(Sterling). That was it. (Edward Sterling). (Unintelligible). Um, we were,
1123			ah, Officer Kastimiler was taking his written statement and assisting him with
1124			getting his belongings out of the - out of the apartment.
1125	_	ber ;	
1126	Q:		Okay.
1127			
1128	A:		Um, and that he was trying - he wanted to get in touch with the - the - Mr.
1129			(Hayes). And he didn't know how to reach him so I told Mr. (Hayes). I said,
1130			"Hey, Mr. (Sterling), um, is gonna try to reach you tomorrow." I just gave
1131 1132			him that message. But the keys - the keys I gave to the jailer that was doing booking was booking his property because he was in the middle of doing, ah,
1132			fingerprints. So I just passed that message along to him.
1133		-	inigerprints. So I just passed that message along to him.
1134	Q:	,	When you - I'm sorry. Some follow up questions.
1136	Q.		when you - I in sorry. Some follow up questions.
1137	A:		Okay.
1138	7 1.		Oku).
1139	Q:	I	When you arrived was there anybody else other than Mr. (Moore) and the
1140	4.		police officers inside the apartment?
1141		,	F
142	A:]	No.
1143			
1144	Q:	(Okay.
1145			·
1146	A:	3	But the night, you know, I couldn't - I couldn't see. I don't know how big the
1147		8	apartment was or anything else but (unintelligible).
1148			
1149	Q:	(Okay. Now when you - you said, ah, briefly that you kind of knew what this
1150		(call was about. Can you recollect what the call was about before you
1151			responded to the request for assistance? What did you know in your mind
1152		7	what the call was about?
1153			
1154	A:		All I knew - initially all I knew is that there was a 415 and I didn't know the
1155			subject. Who the subject was until somebody told me and then I put two and
1156			wo that this was a person who is, um, their condition as far as male or female
1157			unintelligible) and I - I - it clicked because I'd seen those calls before. I had
1158			seen their calls but I never had contact with them. But all I knew is that it was
1159			415 in, ah, at - at the (Guy). I didn't know the situation of it. I didn't know
1160			he individuals involved. I didn't know any of that. I didn't put that together
1161		ι	until afterward.
1162	0		Ohan IIIn man la annual an ah than man a tura in this in the same
1163	Q:	(Okay. Um, you know when, ah, there was a struggle inside the apartment
164	Α.	78.	Mrs. has
.165	A:	ľ	Mm-hm.
1166			

1167 1168	Q:	with, you know, Officer Tu and (Brown) and everybody else, do you know - do you know why they were trying to put handcuffs on Mr Mr. (Moore)?
1169 1170	5	Do you know the reason for it?
1171 1172	A:	Yeah. Officer (Brown) said something to the fact - and this is when we were all - but, like, I was - I was leaving, um, to go get the spit hoods and literally
1173 1174		was happening like that. She goes, "All this over a \$10,000 warrant."
1175 1176	Q:	And who said this?
1177 1178	A:	Officer (Brown).
11 7 9 1180	Q:	Okay. All right. So you knew it was, ah, so you were informed when you went to go get the spit hood? That was in going?
1181 1182	A:	Yeah. I heard her say - I - I heard her say that (unintelligible).
1183		
1184	Q:	Okay
1185		
1186	A:	She didn't say it directed at me (unintelligible). She just kind of said, "All
187		this for a \$10,000 warrant?" Something like that.
1188 1189	Q:	And, ah, while I'm seeing - while, ah, having left to get the spit hood and
1190	Q.	having escorted both - both the fire and paramedics back, do you recall which
1191		supervising units were there, meaning sergeants? Do you know which
1192		sergeants were on scene at any given point?
1193		
1194	A:	Cardoza and Phillips were the two main supervisors in the apartment. I
1195		remember seeing them both.
1196		
1197	Q:	Okay.
1198		
1199	A:	Literally (unintelligible) the wrap and all that. They were there pretty quickly.
1200 1201	0.	Okay.
1201	Q:	Okay.
1202	A:	Um, if Sergeant Ross showed up it was literally outside, never came in the
1204	11.	apartment and - and left. I don't - he did not because of Sergeant Cardoza. It
1205	8	was his scene. As far as between Phillips and Cardoza there was
1206		•
1207	Q:	To your recollection the super- the senior supervisor as we call it here in
1208		Berkeley, the senior supervisor was Cardoza?
1209		
1210 1211	A:	Cardoza seemed to be the - the primary supervisory and Phillips was assisting. I was - that's how I - as I was watching how the calls were being made and

1212 1213 1214		who was doing what, that would be my - and - and Officer (Brown) being under the supervision of Sergeant Cardoza.
1214 1215 1216	Q:	Okay.
1217 1218	A:	'Cause he's our team supervisor. So that's how's that kind of
1219 1220 1221 1222	Q:	Ah, when you head the radio broadcast that, ah, there was - they were doing CPR on Mr. (Moore), did you hear before or immediately after a call for code three ambulance, medical? Did you hear any of that?
1223 1224 1225 1226 1227 1228	A:	No. I didn't. I didn't hear it. I knew BFD was coming. I - I knew - I knew at some point BFD was comin' so as far as the - the spit hoods and - and when they were - I - I don't recall, you - you know, how that, you know, request for medical and when exactly it happened. I - I didn't - I didn't hear I versus, you know, they say some could.
1229 1230	Q:	All right.
1231 232	A:	And I didn't hear it.
1233 1234 1235	Q:	Okay. Was there any other rank, ah, present besides officer and sergeant on the team or anyone near the scene to your knowledge?
1236 1237	A:	No. Not that I recall. I - I don't recall seeing lieutenant or anything.
1238 1239	Q1:	I don't have anything.
1240 1241	Q2:	Um, you said you applied the wrap strap to the ankles.
1242 1243	A:	Mm-hm.
1244 1245 1246	Q:	I'm guessing it needs to be tight to be effective but was it so tight that it would cut off circulation in any way?
1247 1248	A:	No. I - I don't believe so.
1249 1250 1251 1252	Q2:	Okay. And - now during the time that the subject was struggling with the officers when you entered you mentions that - that your could hear the subject screaming, saying things?
1253 1254 1255 1256	A:	Yeah I didn't. It was just that it's - a lot of times you'll get them,, ah, people, not - not Mr. (Moore) specifically but they're just - they're just blood curdling scream, like, you know, you're - you're hurting them or you're trying to do this and it just - it's almost like a - I don't know. I - I - I was kind of

INTERVIEW WITH OFC. (BRIAN) MATHIS
Interviewer: Sgt. Hong
02-13-13/5:10 pm
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Page 29

1257		sometimes it's sort of an attention but that's it, you know, and it - "Get off
1258		me." I remember, "Get off me." I remember just freaking, just, you know,
1259		like, ahhh, I don't - I can't even, you know, it was just - it - it was just
1260		screaming. Just - just not - not pain. More of - more of, you know, his anger
1261		screaming and, "Get off me." Not (unintelligible) nothing specific.
1262		
1263	Q2:	Okay. That's it for me.
1264		
1265	Q:	Anything else do you think, ah, you want to add that we should be aware of?
1266		
1267	A:	No. I think we covered everything.
1268		
1269	Q:	Okay. Oh, have you ever prior contact with Mr. (Moore) before?
1270		
1271	A:	I think I mentioned that earlier. But no I have not. I know of him but I'm as I
1272		said, he's - he's a rather unique individual.
1273		D 1 1 1 1 C(1 + 10 (0 (W. dan Maran)
1274	Q:	Do you have or not prior knowledge of that name? (Xavier Moore).
1275	A -	The control of the state of
1276	A:	The name wouldn't necessarily click to me. It would be the totality of
277		circumstances because the calls are always - generally the ones that I
278		remember are mom calling requesting maybe 5150 because he's doing drugs and he's just - roommates are all gonna, you know, every - it's just like what
.280		we - what I've referred to as a (unintelligible) user. Uses a multitude of
281		different drugs and it will actually be in those calls where the mother actually
282		says. And I've looked for calls and go, "Well I kind of - I'm not gonna assign
283		myself that but I'll kind of get a little closer just in case." If it goes sideways
284		I'm there to help my beat partners out. But I've never got assigned to one of
285	8	those calls.
286		those sails.
287	Q:	So that's the first time you ever saw and met Mr. (Moore)?
288	ζ.	20 1220 0 1220 2200 1200 1200 1200 1200 1200 1200
289	A:	Yes.
290		
291	Q:	Got it. Got it. And the other (Sterling) and the other guy you didn't? Or met
292		them?
293		
294	A:	I have never met them again.
295		9 ×
296	Q:	Mr. (Hayes) or Mr. (Sterling)?
297		
298	A:	No. No contact prior.
299		
300	Q:	That's it. It is, ah, 1758 hours which is, um, 5:58 pm. End of interview with
301		Officer Mathis, M-A-T-H-I-S.

INTERVIEW WITH OFC. (BRIAN) MATHIS Interviewer: Sgt. Hong 02-13-13/5:10 pm Case # 2013-08510 Page 30

This transcript has been reviewed with the audio recording submi	itted and it is an accurate
transcription.	
Signed	

BERKELEY POLICE DEPARTMENT

CASE NO. $\frac{13-0ff0}{(PRINT)}$ DATE <u>2-/3-/3</u>
(PRINT)

STATEMENT TO INVOLVED OFFICER:

Officer GARONER, you are being represented here at this interview by your attorney, Image STERN. You are not in custody and you are free to conclude the interview at any time. You are not obligated to answer any questions.

Any answers you do give may be used in a court of law. Having this in mind, do you

wish to voluntarily proceed with the interview?

SIGNATURE

1		
2		
3		, and the second
4		
5		
6		
7		INTERVIEW WITH OFC. (TIMOTHY) GARDNER
8		Q=Sgt. Hong
9		Q1=Det. Johnson
10		Q2=(Harry) Stern
11		A=Ofc. (Timothy) Gardner
12		
13		
14	Q:	Okay. It's February 13, uh, Wednesday 1814 hours. This is interview with
15	C	Officer (Tim) Gardner. My name is Sergeant Hong, H-O-N-G.
16		0 0 (
17	Q1:	Detective Johnson, J-O-H-N-S-O-N, badge 26.
18	~ 1.	200000000000000000000000000000000000000
19	Q2:	I'm (Harry) Stern, S-T-E-R-N. I'm here representing Officer Gardner.
20	× 22.	in (imily) boom, but a little topic topic topic topic topic to the contract topic to
21	A:	(Timothy) Gardner, last name G-A-R-D-N-E-R.
22	11.	(Innotify) Statute, and a state of the state
23	Q:	All right. Uh, Officer Gardner, you signed your waiver?
24	ζ.	im right. On, Other Curdner, you digited your warrest
25	A:	Yes.
26	11.	100.
27	Q:	All right. Okay. A- Officer Gardner, could you state your rank and badge
28	٧٠	number?
29		number.
30	A:	Uh, patrol officer, badge number 121.
31	11.	On, partor officer, badge named 121.
32	Q:	What was your hire date with Berkeley Police Department?
33	Q.	What was your fine date with Borkeley I office Bepartment.
34	A:	Hmm. Uh, my date of seniority is, uh, let's see, January 1, 02.
35	A.	Thinn. On, my date of semonity is, dir, let 3 see, sandary 1, 02.
36	0.	Got it. Do you have any prior law enforcement experience outside of Berkeley
37	Q:	Police Department?
38		Tonce Department:
	۸.	No
39	A:	No.
40	0.	Which noted anarations toom were you warking vesterday's shift?
41	Q:	Which patrol operations team were you working yesterday's shift?
42	Λ.	Tooms through
43	A:	Team three.
44		

45	0:	Yesterday we're all – when I say yesterday we're always talking about
45 46	Q:	February 12, the day of the incident.
47		rebluary 12, the day of the moldon.
48	A:	Right.
49	Α.	Trigit.
50	Q:	Okay. Team three. Okay. What are the normal days worked and normal hours
51	Α,	worked for team three?
52		
53	A:	Monday through Thursday, 3:30 in the afternoon till, uh, 0130 in – in the
54		morning.
55		
56	Q:	What was your call sign during the – yesterday's shift?
57		
58	A:	3A16.
59		
60	Q:	And what area or beat are assigned to yesterday's shift?
61		
62	A:	Uh, walk front area mostly and the marina.
63		
64	Q:	Okay. In beat 16?
65		
66	A:	Yes.
67		Uh, who were your supervisors for yesterday's shift?
68	Q:	On, who were your supervisors for yesterday's sinit.
69	۸.	Uh, Sergeant (Shawn) Ross and (Ben) Cardoza.
70 71	A:	Oli, Beigeant (Bhawn) 1055 and (Ben) Cardoza.
72	Q:	Again Ross is - Sergeant Ross is R-O-S-S. Cardoza Sergeant is C-A-R-D-O-
73	Q.	Z-A. And are they your normal supervisors?
74		Zi i i zizi di
75	A:	Yes.
76	11.	
77	Q:	When was the last shift you worked prior to yesterday's shift?
78		
79	A:	The preceding day.
80		
81	Q:	Okay. Today is currently Wednesday. Yesterday's shift was a Tuesday.
82		Preceding day you were referring to Monday.
83		
84	A:	Monday.
85		
86	Q:	Uh, do you hold any secondary jobs?
87		
88	A:	No.
89		

90 91	Q:	All right. Did you work any overtime after y- um, the last shift you worked prior to the shift of yesterday's incident?
92 93	A:	No.
94 95	Q:	Have you taken any medication, prescription or otherwise?
96 97 98	A:	No.
99	Q:	Have you consumed any alcohol in the past 24 hours?
100 101	A:	Mm, yes. I had a couple beers when I got home last night.
102 103	Q:	Okay.
104 105	Q2:	That was post this incident?
106 107	A:	Yes.
108 109	Q1:	It was after (unintelligible).
111	Q2:	Okay.
112 113	Q:	Uh, do you have any medical conditions?
114 115	A:	Uh, no.
116 117 118	Q:	When was the last time you slept, how long, and between what hours let's say prior to yesterday's shift?
119 120	A:	Prior to yesterday's shift?
121 122	Q:	Yeah.
123 124	A:	So
125 126	Q:	How much rest did you get (unintelligible).
127 128	A:	the night before?
129 130 131	Q:	Correct.
131 132 133		Uh, I think I had about eight to nine hours. Yeah, I believe that.
133		Okay. Uh, did you sustain any injuries during yesterday's incident?

125		
135 136	A:	Yes. I twisted my right knee.
137	11.	
138	Q:	Did you complete the injury - city's and - and police department's injury
139	ζ.	report?
140		
141	A:	Yes.
142		
143	Q:	Okay. Um, did you sus- um, I'm sorry. Do you wear corrective eyeglasses or a
144		contact lenses?
145		
146	A:	No.
147		to the time with the buckle going
148	Q:	Okay. Starting with your front of your duty belt starting with the buckle going
149		clockwise could you describe what duty gear is on your duty belt?
150		are the state of the same with
151	A:	Uh, well clockwise let's see. (Unintelligible) um, handcuffs case with
152		handcuffs, key ring, uh, pistol, and, um, left side, uh, flashlight, radio, baton
153		ring, asp, and then, uh, extra magazines.
154		140
155	Q:	Okay. Your magazine pouch, correct?
156		
157	A:	Yeah.
158		any damage?
159	Q:	Did your duty belt or any gear on your duty belt sustain any damage?
160		
161	A:	Not that I'm aware of.
162		The vehicle make and model you were driving during yesterday's shift?
163	Q:	The venicle make and model you were driving daring years
164		Uh, no idea what the year is. It's a Crown Victoria - Ford Crown Victoria.
165	A:	Uh, no idea what the year is. It s a crown victoria
166		Remember the vehicle number?
167	Q:	Remember the vehicle number.
168		Yeah, 1742.
169	A:	
170	0.	All right. What kind of markings and emergency equipment is on this vehicle?
171	Q:	
172	A:	Um, standard police markings for the Berkley Police Department, uh, insignia
173	A.	on the sides, black and white color scheme with a emergency light bar and
174 175		spot lights right and left.
175		-
170	Q:	Okay. Do you normally drive this particular vehicle?
178	۷٠	
178	A:	Yes. It's the, uh, beat 16, uh, car.
1//	4.57	205

180 181	Q:	Were you a single officer car or a paired officer car?
182 183	A:	Single.
184 185 186	Q:	Now you've completed your supplemental police report regarding this incident, correct?
187 188	A:	I have.
189 190	Q:	All right. And could you read your completed report for us?
190 191 192 193 194 195 196 197 198 199 200 201 202 203 204	A:	Summary. Sorry. On the listed date just after time of report I heard a broadcast of additional units needed for a call at 2116 (Austin) Way number 514. It was apparent from the broadcast that BPD officers were involved in a struggle with a violent subject. I responded code three and when I reached the apartment I saw several BPD officers struggling to take an extremely large and violently resisting partially naked person into custody. The person appeared to be approximately 400 pounds and it took several officers' combined efforts to control his hands. Along with several officers who arrived with me we m- finally managed to place him into handcuffs and called for BFD to respond to assist with transporting him. After we had successfully placed him in handcuffs it appeared he had suddenly stopped breathing. I assisted with immediately uncuffing him while other officers requested emergency medical assistance and began chest compressions. BFD arrived shortly thereafter and began efforts to revive the person.
205 206 207 208 209 210	Q:	Okay. Can I see (unintelligible) real quick? All right. Okay. So when you heard the, uh, radio broadcast of, uh, additional – request for additional units do you recall who made that broadcast and what the words were if you can recollect?
211 212	A:	Um, it was A4.
213 214	Q:	Mm-hm.
215 216 217	A:	Uh, Officer (Glen Brown) and it was a partially broken transmission and what I heard was send us more officers or something to that effect.
218 219	Q;	Okay. And you res- responded in what manner, uh
220 221	A:	Uh
222 223 224	Q:	what code?
224	T	206

225	A:	I responded code three, lights and sirens.
226		Obviously you - you did so because there was a reason. Do you recall why
227	Q:	Obviously you – you did so because there was a rem
228		you did so?
229		Well, $I - it - it$ was clear that she was in some kind of struggle to overcome,
230	A:	Well, $I - it - it$ was clear that she was in some kind of the variable was uh, a person and that y- you know, from the quality of her transmission it was
231		
232		an emergency,
233		Okay. And you re- responded from where?
234	Q:	
235		I think it was Sacramento - or, uh, San Pablo and Bancroft thereabouts.
236	A:	I think it was Sacramento — or, an, but I start
237		or to the live you arrived on scene.
238	Q:	Okay. Eventually you arrived on scene.
239		
240	A:	Yes.
241		Um, did you speak with anyone, uh, prior to going to the unit where, uh, the
242	. Q:	Um, did you speak with anyone, tin, prior to go 8
243		officers were at all
244		
245	A:	Um
246		. 10
247	Q:	when you arrived?
248		well I - I saw other officers there and we started going through the open
249	A:	well I – I saw other officers there and we started go and
250		door
251		
252	Q:	Mm-hm.
253		or to the apartment building and then we jumped in the elevator and, uh,
254	A:	or to the apartment building and then we jumped in the
255		or to the apartment building and then we jumped and you know, I think, um – I think (Mathis) said something like, "Is that
256		everybody?" And I said, "We've got enough. Let's go."
257		1 1 1 with wou mive?
258	Q:	Okay. Who jumped in the elevator with you guys?
259		
260		I think it was, um – uh, (Nikos). I don't know his last name. Kastmiler?
261		
262		Kastmiler.
263		1. Eth floor
264		Yeah. And, uh, so then we went up to the fifth floor.
265		
266		Okay. So in the elevator with you was yourself, (Mathis), and, uh, Kastmiler?
267		
268		Yes.
269		
205	,	207

	9	
270	Q:	Okay. Uh, and so you made it up to the fifth floor
271		Tr. I
272	A:	Yeah.
273		and, uh, when you reached the apartment was the door open or closed?
274	Q:	and, un, when you reached the apartment was the
275		It was onen
276	A:	It was open.
277	0.	Open. Uh, could you just describe, uh, the general description of the area in
278	Q:	which this area – in which this incident occurred? General description of the
279		area that this, uh, incident occurred.
280 281		
282	A:	You mean in the apartment?
283	11.	
284	Q:	Yeah. Or the landing, apartment, and what you observed before we talk about
285	ζ.	what you saw in terms of the struggle, et cetera.
286		
287	A:	Um, well, there's s- you know, the elevator opens up and there's - it seems
288	41	like an interior courtyard
289		
290	Q:	Okay.
291		and I had to walk around the, um, I guess there was a railing maybe or
292	A:	something like that. And so I walked around kind of an L to get to the open
293		
294		door.
295		Mm-hm.
296	Q:	
297	Α.	And, uh, so I guess the – the doors kind of open out into the courtyard but
298	A:	they don't face the courtyard necessarily. I think they were just like, kind of
299		walls that divide them.
300 301		
301	Q:	Okay. All right. And, um, so when you got there you s- uh, you saw the door
302	Q.	was already open?
304		
305	A:	Yes.
306		
307	Q:	Okay. And you looked in?
308		
309	A:	Yes.
310		Okay. Co- uh - uh, without talking about the people can you talk about what
311	Q:	Okay. Co- uh - uh, without talking about the people can you talk about what
312		the rooms looked like to the best of your recollection?
313		

314 315	A:	I don't remember a lot about what the room looked like. I just remember an open door and I was able to look through to a like – a living room area or
316		something like that
317	0.0	T. Tarana
318	Q:	Hmm.
319	٨٠	where there was like, $a - a$ mattress and some clothes strewn about.
320 321	A:	Whole there was like, a - a manage and seem
322	Q:	Okay. So you saw a mattress and – okay.
323	Q.	Onay. Do you burn a security
324	A:	Yes.
325	11.	
326	Q:	Um, so you look in and what are you observing in terms of the officers and
327	ζ:	the subject?
328		
329	A:	Um, I observe, uh, a – my first observation was a very large person, very fat,
330		very a lie, obese grotesquely morbidly obese person with three officers
331		struggling to, uh, subdue him.
332		
333	Q;	When you say they were struggling to subdue him what was the position of
334		the subject and subject we're gonna be referring to him as Mr. (Moore).
335		
336	A:	Okay.
337		
338	Q:	His name is – last name (Moore). Um, what was Mr. (Moore)'s position and
339		what was the, uh – the positioning of the officers when they were trying to
340		subdue him?
341		C + C 11 he was bind of an hig knows
342	A:	Um, I think Officer (Tu) – he was i- i- first of all he was kind of on his knees
343		and his elbows, uh, or tha- well, maybe his knees and his shoulders 'cause his
344		hands were partially behind his back, um, and it looked like he was trying to
345		rise up. Um, Officer (Tu) would've been against the wall, uh, on the – on Mr.
346		(Moore)'s, uh – uh, right side. And, um, Officer (Brown) would've been towards his front, his shoulder area. And, um, I think it was (Brandon Smith)
347		
348		had ahold of h- the left side of him.
349	0	So Officer (Tu) was to the w-right of Mr. (Moore)
350	Q:	So Officer (1th) was to the w-right of Wh. (Moore)
351	Α	Yeah.
352	A:	1 Call.
353	0.	(Brandon Smith)
354	Q:	(Dialidoit Silitaly
355 356	A:	Mm-hm.
356 357	Λ .	IVALLE TALLE.
357 358	Q:	was to the left, and Officer (Brown) towards the shoulder
000	Y	

359		
360	A:	Mm-hm.
361		Courtal about damper of the court of the cou
362	Q:	frontal shoulder area?
363	A 1700	Yeah.
364	A:	i ean.
365		Okay. And were they, uh - which way was - again, so you're saying based on
366 367	Q:	what you described that Mr., um – uh, (Moore) s- was on his belly or on his
368		back?
369		
370	A:	He wasn't on his back.
371	4.4.	
372	Q:	Okay.
373		
374	A:	But I don't know if he was on his stomach or partially on his side 'cause a- all
375		I remember is focusing on where were his hands for the most part
376		
377	Q:	Okay.
378		
179	A:	because I – he was not yet handcuffed.
380		
381	Q:	So when you entered
382		3.6
383	A:	Mm.
384	0	uh, it was only Officer (Tu), (Smith), and (Brown). Only those three?
385	Q:	un, it was only officer (14), (billing, and (bre way) and
386	۸.	Right.
387	A:	rugiii.
388 389	Q:	Okay. And you entered obviously you said - you said with Kastmiler and
390	Q.	(Mathis)
391		(2-2-2-2-2-2-2-2-2-2-2-2-2-2-2-2-2-2-2-
392	A:	Mm-hm.
393	11.	
394	Q:	and he was not handcuffed?
395		
396	A:	N- no.
397		
398	Q:	Okay. So, uh, seeing what you see and the struggle that you see what did you
399		- what did you do in terms of (unintelligible)?
400		1 Cl. 1 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -
101	A:	Well I went to grab one of his hands or to help because I saw that there were
402		handcuffs on at least one wrist and they seemed to be – there seemed to be at
403		least two sets of handcuffs linked together.

404 405	Q:	Mm-hm.
405	Q.	
407	A:	And so one of his hands was free and I focused on that hand, uh, and just tried
408	11.	And so one of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and i locused on the distribution of his hands was need and in the distribution of his hands was need and in the distribution of his hands was need and his
408		to the uncuffed wrist.
410		
	0.	Do you recall which hand was cuffed and which hand was still uncuffed?
411	Q:	
412	A:	I don't. Not with any clarity.
413	A.	
414	0.	So you grabbed the uncuffed hand you're saying?
415	Q:	
416	۸.	Well, I – I tried to. I – I – I think at some point I was able to kinda help push
417	A:	his, uh, hands together but I didn't have like, a very clean grip.
418		
419	0	Okay. Um, so, uh, eventually you guys were able to successfully handcuff
420	Q:	him?
421		mm:
422		Yes.
423	A:	
124	_	Okay. Um, and, uh – and the people who were doing the – if you can recall
425	Q:	Okay. Um, and, un – and the people who were designed that was assisting in the successful handcuffing on Mr
426		the specific officers that was asset of
427		M. Lon
428	A:	Mm-hm.
429		
430	Q:	uh, (Moore)
431		
432	A:	Mm-hm.
433		1: -1 officers were involved in that?
434	Q:	do you know which officers were involved in that?
435		
436	A:	I - I don't know for sure.
437		
438	Q:	Okay.
439		
440	A:	So
441		
442	Q:	Well were you involved?
443		
444	A:	I – I was involved yeah
445		
146	Q:	Okay.
447	_	
448		at that point.
-170	7 2.	2 ′

449			
450	Q:	Um. do vou	remember how Mr. (Moore) was clothed?
451	Q.	, , ,	
452	A:	He was part	ially naked or his, uh – like, there seemed to be something around
453	11.	his legs I- a	ad that was it – his lower extremities.
454		1110 1080 1 411	
	0.	Do you rem	ember if any of- other officers took – try to take control of Mr.,
455	Q:	uh, (Moore)	
456		ші, (і чі боге)	3 1050.
457	Α.	Yes.	
458	A:	165.	
459	Ō	What do yo	recall?
460	Q:	What do yo	i lecan:
461		T.I II T	recall that he was still, uh, struggling. It – it seemed like he was
462	A:		
463		trying to sti	I get up.
464			
465	Q:	Mm-hm.	
466			La catalana a la la afficiente de la companya de la contra del contra de la contra del
467	A:	Um, and I t	nink (Mathis) had ahold of his lower legs – his ankles. And
468		someone, u	n, called for the wrap.
169			
470	Q:	Mm-hm.	
471		a	a god at the second and these
472	A:	And it was	apparent that he would not fit in the wrap and so we decided that
473		we would, u	th, put the hobble restraint from the wrap on his ankles.
474			
475	Q:	Okay, there	's a hobble restraint
476	`		
477	A:	So I helped	with that.
478		•	
479	Q:	the strap	part for
480	ζ.	•	
481	A:	Yeah, the st	rap.
482	11.	,	
483	Q:	So vou assi	sted in the
484	Q.	20 700 020	
485	A:	Yes.	
486	Λ .	105.	9
487	0.	wranning	of the ankles?
488	Q:	աւպիրուն	
488 489	A:	Yeah.	
	A.	ı can.	28
490	0.	Okor Soit	was you and (Mathis)?
491	Q:	Okay. 30 h	THE JOH MARK (LIAMERAND).
492			

493 494 495	A:	Yeah. And – and I think – I – I'm not sure but I think it was (Cardoza) dropped the wrap right next to us and I said, "Let me have the hobble or the strap," and he gave it to me and I gave it to (Mathis). And (Mathis) w- at that
496		point was holding onto his f- ankles
497	0.	Mm-hm.
498	Q:	
499	A .	because they were thrashing around. Um, so I handed him the hobble or the
500	A:	strap, whatever it's called, and then held his ankles while (Mathis) wrapped
501		the strap around his, uh, ankles.
502		the strap around his, un, anxies.
503		Okay. Um, so when you described when you first got there and you saw
504	Q:	Okay. Um, so when you described when you have got and officer
505		Officer (Smith), Officer (Tu), and Officer
506		
507	A:	Mm-hm.
	11.	
508	0.	(Brown), uh, e- d- would you describe it as them having a very difficult
509	Q:	time with this mist- Mr. (Moore)?
510		
511		Yeah. I don't - I don't think that they would've been able to handcuff him if it
512	A:	Yeah. I don't - I don't dillik that they would to soon and
513		weren't for our assistance.
514		as a landar having a very difficult
515	Q:	So the three officers were e- three officers are already having a very difficult
	Q.	you _ it's your helief that willout your help and the other
516		officer's help that it would've been very – it would've been hard and difficult
517		for them to successfully handcuff him?
518		
519		Yes. That's very true and I did notice that Officer (Tu) was – was a-clearly
520	A:	Yes. That's very true and I did notice that office (15) fatigued like, he was on the verge of, uh, losing his ability to, uh, continue to
521		fatigued like, he was on the verge of, un, losing ins donly so, and
522		struggle.
523		a de la Carte and most not
524	Q:	Okay. Uh, during the struggle period where Mr., uh, (Moore) was n- uh, not
	Q.	complying
525		00111p1) 11-18
526		Man han
527	A:	Mm-hm.
528		did you hear officers give verbal commands to Mr. (Moore)?
529	Q:	did you hear officers give verbar commands to the commands
530		1 11 20
531	A:	I do but I don't remember what they were.
532	11.	
	0.	Okay. But you knew they were police commands?
533	Q:	Omy y -
534		Yes. Yeah.
535	A:	ICS. I Call.
536		December what it was?
537	Q:	But you can't remember what it was?

538		I don't rem- but I – I remember that there was some instruction for him to,
539	A :	you know – you just – stop resisting or put his hands – just put his hands
540		behind his back, something like that. I don't remember exactly though.
541		bening his back, something like that. I don't transfer
542		Okay. Now Mr. (Moore), uh, do you remember him v- saying anything,
543	Q:	yelling – what was his – what was he verbalizing during this – the struggle?
544		
545		I remember him - him yelling loudly, uh, but I don't remember h- h- or him
546	A:	articulating any words that I could make out.
547		
548	Ο.	Okay. Um, do you recall if Mr. (Moore) was complaining of pain of any way
549	Q:	or complaining that he was having difficulty breathing of any way during the
550		struggle?
551		suuggio.
552	۸.	I didn't hear any of that. No.
553	A:	€
554	0.	Okay. Um - uh, y- would you characterize Officer (Mathis), Officer (Tu) as
555	Q:	big – big officers? Um, and Officer (Smith) as well?
556		
557	A:	Yeah.
558	Α.	
559	0.	And you are - what's your stature? Your height and weight?
560 561	Q:	7 Med y out that the
561 562	A:	S- uh, 6 feet, 195.
563	Λ.	
564	Q:	195. Okay. And, uh, based on y- and you consider yourself in shape?
565	Q.	
566	A:	Reasonably. Yeah.
567	7 1.	26
568	Q:	And, uh, your felt it – do you feel that, um – uh, y- y- during the struggle that
569	ζ.	you yourself was having a difficult time controlling
570		•
571	A:	Oh, yeah. I mean, when I was holding onto his feet it was -I - it -I - it was
572		all I could do to hold his – his ankles down.
573		
574	Q:	Okay.
575		
576	A:	Uh
577		
578	Q:	Uh, I know you said you assisted in handcuffing
579	`,	
580	A:	Mm-hm.
581		a state the whendle rectraint
582	Q:	and then thereafter you assisted in the, uh, ankle restraint.
		214

583		
584	A:	Mm-hm.
585	0	Did you at all – can you – during that period c- can you describe if you can
586	Q:	recollect the positioning of – was a, uh – other officers were they at all on top
587		of Mr. (Moore), uh, on top of chest, on top of his belly, on top of his head, any
588		of that do you recall?
589		of that do you recan:
590	۸.	I don't really recall that, um, anybody on him because my focus was really
591	A:	literally on getting his hands handcuffed and then I immediately moved to his
592 593		feet to help (Mathis). So, um, I don't – I don't have a recollection of someone
594		squarely on him.
595		,
596	Q:	Do you recall what as- Officer Kastmiler was doing?
597	Q.	
598	A:	No.
599	1.5.	
600	Q:	Okay. Um – um, are you, uh, based on your training and experience and or
601		any additional training you may have or specialized training are you able to,
602	- 10	uh, recognize somebody who may be under the influence of some kind of
503		narcotic or illicit drug?
604		
605	A:	Sure.
606		
607	Q:	Okay.
608		
609	A:	Yeah.
610		the state of the s
611	Q:	Would you based on your esti- based on your training and your experience
612		would you say that this Mr. (Moore) was under the influence of an- in any
613		way?
614		that he was
615	A:	It w- just based on his behavior it was my suspicion that that's – that he was
616	2	under the influence of a – some kind of stimulant.
617	_	Olares
618	Q:	Okay.
619		Uh, and especially given also the I guess his strength.
620	A:	On, and especially given also the i guess in sure-game
621	Ο.	Strength?
622	Q:	Suchgui:
623 624	۸.	Yeah.
624 625	A:	10011.
625 626	0.	Okay. Did he smell of alcohol?
626 627	Q:	Chaj. 214 M Carrier Ca
02/		241

628	A:	I don't remember that.
629		I'll and the accepting man freely (unintelligible) enouthing like that?
630	Q:	Uh, was he sweating profusely (unintelligible) anything like that?
631		Um, no. It was just more from – from my point of view his – the – the violent
632	A:	behavior and – and the I guess how strong he was in – in the – in terms of his
633		
634		resistance.
635		O1 II 1 C ' 1.4 we head just up real briefly Refere going
636	Q:	Okay. Um, before going – let me back track just, uh, real briefly. Before going
637		to the call for assistance on the radio did you even know what type of call that
638		these officers were at? (Brown) and, uh, (Tu).
639		
640	A:	I remember hearing the call originally of some kind of disturbance, some kind
641		of, uh, fight between roommates and I heard three units - I believe three units
642		got dispatched to it. So I just kind of absently heard it and - and then I didn't
643		hear anything more until all of a sudden I heard (Elaine Brown)'s re-voice on
644		the radio asking for help or cover – additional units.
645		
646	Q:	Okay. Uh – uh, let me just do this real quick then. Have you ever had any
647		prior contact with Mr. (Moore)?
548		
649	- A:	Not that I am aware of.
650	1 2.	
651	Q:	Okay. Do you have any prior knowledge of Mr. (Moore), who he was and
652	٧.	what he was all about?
653		What he was an account
654	A:	Um, no. I – I kinda feel like there was a call last week, uh, of a 5150 at some
	A.	point and I thought maybe it was the same person when the call went out but I
655		have no idea if it was or not.
656		Have no luca in it was or not.
657	0	Okay. Um, all right. So, uh, you said that you were - you - you - you and the
658	Q:	other officers were able to successfully handcuff him. And were you and
659		Officer (Mathis) or any other officer together able to suc- successfully restrain
660		
661		his ankles?
662		
663	A:	Yes, we were.
664		1 1 1 00 1141
665	Q:	Okay. After his ankles were restrained and he's now in handcuffs did the
666		struggle continue?
667		
668	A:	Um, yeah. We e- he was still trying to lift up his legs, um, and move. Um, I
669		don't know how long that went on
570		
671	Q:	Okay.
672	•	
		246

673 674 675 676	A:		but we – we had to basically immobile- or t- to the best of ability keep him in one place while we decided how to get him transported and that – and there was some discussion about, uh, the wrap versus BFD and then we realized he was just too big to fit a wrap so it had to be BFD.
677 678 679	Q:		H- when you said you kept him immobile like, to your recollection how was Mr. (Moore) kept immobile while waiting for, uh, BFD?
680 681 682 683 684 685	A:		It was $-I - I$ feel like he was partially on his side because when I was looking down at his ankles, um, his ankles were together, uh, you know, um, one on top of the other and like I said, I didn't really, um, look to his head but I was holding onto his ankles or (Mathis) was. I can't remember what. And $-$ and that's it.
686 687 688 689 690	Q1:		So you're saying that, um, it would be inconsistent with him being flat on his back or flat on his stomach, uh, to have his ankles appear to be stacked one on the other.
691	A:		That – yeah.
692 393 694 695	Q1:		Like – like, re- like – like, I'm doing with my wrists like that? Except he was on his back. He would be more parallel?
696	A:		Right.
697 698 699 700 701	Q1:		And so your recollection is that because of the way you know that you were holding his ankles if – you believe that he was probably on at least partially on his side
702	A:		Correct.
703 704	Q1:		is what you're saying? Okay.
705 706	Q:	x	Was somebody bracing him to keep him on his side? Do you recollect?
707 708	A:		That I don't remember.
709 710	Q:		Okay. But he was on his side?
711 712	A:		Yeah.
713 714 715	Q:		Okay. And to – and to you recollection nobody was s- sitting on top of him, laying on top of him at that point?
716 717	A:		No

718 719 720 721	Q:	Okay. All right. Um, and so there was a discussion as you said as to the wrap or BFD and when you said, uh, was it – was it d- was it determined based on discussion that you were gonna call BFD?
722 723	A:	Yeah. I think it was immediate.
724 725	Q:	Okay.
726 727 728 729	A:	It was – it was he's too big for the wrap. We better call BFD and, uh, I think th- Sergeant, uh, (Phillips) said something like, "Yeah, they'll do the four point restraint," or something like that in a gurney.
730 731	Q:	Got it. So, um
732 733 734	A:	I don't know if she used the word four point but it was some kind of restraint
735 736 737	Q:	Yeah.
738 739	A:	term that she used.
740 741 742	Q:	So you – your decision was that you guys gonna get the BFD to bring a gurney up so you guys can strap him into a, um – in a medical gurney and to take him down?
743 744	A:	Right.
745 746 747 748	Q:	Question is is do you know at – did you know at the time while during – while the struggle was happening why the officers, uh, wanted him restrained in handcuffs? What was the intent?
749 750	A:	No. I did not know.
751 752 753 754	Q:	Okay. And after the – everything calmed down and they were told that we're gonna get the gurney for, uh, Mr. (Moore) to take him out of the room do you know why he was gonna be taken out of the room?
755 756	A:	No.
757 758	Q:	Okay. Um, so, uh, you're – you're waiting for the gurney, correct?
759 760	A:	Yeah.
761 762	Q:	All right. And who made the request for the gurney? Do you recall?

763	100	The lignes it was an Spraggert (Phillips)
764 765	A:	I believe it was, uh, Sergeant (Phillips).
766 767 768	Q:	And while waiting for the gurney unfortunately, um – um, Mr., uh, (Moore) had a difficulty breathing. Could you describe how that came about to the best of your
769 770 771 772 773	A:	Just at some point it seemed like he was not breathing. I mean, it just, you know, we were waiting for the gurney and I don't remember the passage of time, uh, but it was not that long, um, and then, eh, he – you know, we – we weren't holding him down at that point. Uh
774 775	Q:	You were not?
776 777 778 779	A:	No. Um, or if – if we were it was like, light touch just the way you might, uh, hold on to someone without pressure but knowing if they start resisting you'll – you'll know it. Um
780 781 782 783	Q1:	And he was still breathing at that point when you guys were doing that he was still
784 785	A:	Right.
786 787	Q1:	was, uh – uh
788 789	A:	Right.
790 791	Q1:	was he still screaming?
792 793	A:	No.
794 795	Q1:	Okay. But he – but you knew that he was breathing?
796 797	A:	Right.
798 799	Q1:	Okay.
800 801 802 803 804 805 806	A:	So with that kind of, uh, I guess a light touch, uh, it – I don't remember who it was said, "Hey, is he breathing?" And I – and I looked and he wasn't. So, um, we turned w- well I guess it – we immediately decided well, we need to do chest compressions right away. And, uh, Sergeant (Phillips) asked for, uh, BFD to respond to a medical emergency. I think she used that term, something like it.
807	Q1:	Okay.

808 809 810 811 812 813	A:	And I immediately went over and attempted or did unhandcuff him and, um, you know, pu- a- it was kind of all one motion where he was gonna be rolled all the way onto his back therefore I wouldn't be able to unhandcuff him. So at that point I was unhandcuffing him as – as I don't remember who it was rolled him to his back and then immediately started chest compressions.
814 815	Q:	So you a- unhandcuffed Mr. (Moore)?
816 817	A:	Yes.
818 819 820	Q:	Okay.
821 822	Q1:	Successfully?
823 824	Q:	And
825 826	A:	Yes.
827 328	Q:	Okay. And he was rolled back onto his back and where they were doing – and then the officers started doing CPR?
829 830	A:	Yes.
831 832	Q:	Uh, do you remember who t- which officer is doing the chest compression?
833 834	A:	It was Officer (Tu).
835 836	Q:	Okay. Do you remember who was doing the airway portion of the - the air?
837 838	A:	Um, you mean making sure that the airway was clear?
839 840	Q:	Yeah. Or if (unintelligible).
841 842	A:	I
843 844	Q:	normally you have somebody at the mouth
845 846	A:	Right.
847 848	Q:	and somebody at the chest.
849 850 851	A:	I don't remember who did that.

			*
852 853 854	Q:		Okay. All right. So if you can remember from the time that the f- for the la-s-uh, lack of a better expression from the time that the, uh, fight was s-s-stopped to the time that he stopped breathing
855 856	A:		Mm-hm.
857 858 859	Q:		what – what would you – do you remember what time span that would be?
860 861	A:		Um, there a couple minutes.
862 863	Q:		Couple minutes?
864 865	A:		Yeah.
866 867	Q:		Okay. So what – what are you doing while, uh, the officers were doing, uh, CPR on Mr. (Moore)?
868 869 870 871 372 873	A:		Um, well I was – I went out the door 'cause BFD – I – well there was conflicting, uh, information as to whether or not BFD was on scene or coming from a fire or something like that 'cause there was another incident that was in progress. And so I was, um – I went out the door to see if they had arrived 'cause I was gonna lead 'em back into the, uh, room.
874 875	Q:		Hmm.
876 877 878 879	A:		So I was, you know – and I think, um – uh, you know, there was some talk about, you know, let's get these guys here, you know, s- can we speed it up or something like that.
880 881 882	Q:		Okay.
883 884	A:		So
885 886	Q:	Si	And so you were out on the landing area (unintelligible).
887 888	A:		Yeah. I think I went back and forth once or twice.
889 890	Q:		Okay.
891 892	A:		Just to
893 394	Q:		And then
895 896	A:		sh- keep going out to see are they here yet. You know, that kind of thing.
			221

897	Q:		And w- every time you went back in it was just simply the officers
898	۸.		Just
899 900	A:		Jubil
900 901 902	Q:		continuing CPR?
902	A:	12	Yeah. And
904	1 1.		
905	Q:		(Unintelligible).
906	Ψ.		` -
907	A:		a- at one point I asked Officer (Tu) if he needed, uh - needed, um, you
908			know, give him a break or
909			
910	Q:		Yeah.
911			
912	A:		to take over if he was getting tired and, uh, but he seemed to be doing a
913			pretty good job. And he said no, he was fine.
914			
915	Q:		Okay.
916			ii a can
)17	A:		And, um
918			
919	Q:		Okay. And eventually paramedics arrived?
920			14'us out the clayator I
921	A:		Yeah. And so I think it might have been my second time out the elevator – I
922			head the – the t- you know, elevator coming up or something and so I saw it
923			open. I said y- in here guys. And let 'em into the room.
924			Mr. (Moore) and they
925	Q:		And, um, BFD came and, uh, kept working on Mr. (Moore) and they
926			transported him in the ambulance to your knowledge to (unintelligible)
927			hospital? So when – after they trans- after they took Mr. (Moore) out of the
928			room how – did you stay or did you – did you leave or what – what happened
929			thereafter?
930			XX 11 I 1 C I want downstairs
931	A:		Well, I left and went downstairs.
932	_		When – when BFD arrived?
933	Q:		when – when BrD affived:
934	_		Vach
935	A:		Yeah.
936	0		When the fire
937	Q:		WHOII the inc
938	۸.		Yeah.
739	A:		i Can.
940	0.		and paramedics arrived?
941	Q:		and parametres arrived.

942		Yeah. Yeah, um, they told us if we weren't needed, to leave.
943	A:	Teall. Teall, they told do if we week the
944	0.	I see. 'Cause the – okay. And so you went – you left?
945	Q:	1 300. Oddo die Siny - Est y
946	A:	Yes.
947	A.	103.
948	0.	Did you leave the apartment scene? Did you drive off?
949 950	Q:	
951	A:	Yeah. No. I, um, stayed at the apartment just to br- until I was relieved.
951	А.	1 0011, 110, 1, 0011, 1
952	Q:	Okay.
953	Q.	Ondj.
955	A:	And then at some point, um, I was told to go back to the station.
956	А.	This most as some I
950 957	Q:	Okay. Who told you to go back to the station?
957 958	Q.	Okay. Who to a year
95 8 959	A:	Uh, Sergeant Ross.
	Α.	
960	0.	Okay. Um, do you recall which supervising unit or which sergeants were on
961	Q:	scene, uh – uh, at that incident outside the apartment, inside the apartment –
962		which – which supervisors arrived and were there?
963		Willett = Willott Super Visers and Visers
964	۸.	Well I know, uh, (Ben Cardoza) and (Amber) were in the room
965	A:	Well I know, and (Den Caracta)
966	0	Mm-hm.
967	Q:	[VIIII-IIIII.
968		in the apartment. (Shawn) was, uh – (Shawn) Ross was downstairs and, uh,
969	A:	that's as much as I recall for sure.
970		that's as much as i recan for sure.
971	0	Oleve
972	Q:	Okay.
973		Um, maybe (Van) Huynh was there but $I - I$ can't be sure – at some point.
974	A:	Um, maybe (van) Huynn was there but I I but I but I
975	_	Okay. Va- (Van) Huynh is, uh, H-U-Y-N-H? You're not sure if he was there?
976	Q:	Okay. Va- (Vaii) Huyiii is, uii, 11-0-1 iv ii. Tou io io io
977		T. 1. T. 1 24
978	A:	Yeah, I don't
979		Okay. Do you remember any other ranking officer there on – on scene?
980	Q:	Okay. Do you remember any other ranking officer there on showing
981		
982	A:	No.
983		of the later to you have enothing?
984	Q:	Okay. Um, let's see. Um, do you have anything?
985		

986 987	Q1:	Did you interact with any subjects that weren't police officers or Mr. (Moore) during the time when you came there in the apartment (unintelligible)?
988 989 990	A:	I, um – when I first exited the elevator I didn't know exactly where the room was
991	0.1	Mary Land
992	Q1:	Mm-hm.
993 994	A:	and there was a person and I don't know who it was but they were like,
995	Λ.	looking and it looked like they knew what was going on so I said, "Where is
996		it?"
997		
998	Q1:	Mm-hm.
999	(XI
1000	A:	"Where's the room," maybe or something like that. And he just pointed,
1001		
1002	Q1:	Okay.
1003		
1004	A:	So (unintelligible).
1005		
006	Q1:	Did you know that person from prior contact or anything?
1007		
1008	A:	No. No.
1009		
1010	Q1:	Okay. And did you see that person later or
1011		
1012	A:	N- not to my knowledge.
1013		
1014	Q1:	Okay.
1015	0	Ol ('4411'-'141) Oleve III setuplity I get some guestions. I get ones from
1016	Q:	Okay (unintelligible). Okay. Uh, actually I got some questions. Last ones from
1017		me. Of all the officers on scene that you re- can call - you can recall
1018	۸.	Mm-hm. Mm-hm.
1019	A:	IVIIII-IIIII. IVIIII-IIIII.
1020	Ō.	okay, at any time did any officer or you strike Mr. (Moore) with a open
1021	Q:	hand or closed fist?
1022 1023		hand of closed fist:
1023	A:	No.
1024	A.	170.
1025	Q:	Did you witness any officer or you use – use the, uh, baton?
1020	Q.	Did you minious dily silled of you doe doe me, me, sur
928	A:	No one used a baton that I saw.
1029	1.11	
1030	Q:	Had you or any other officer, uh, used, uh, OC spray?
	_	

1031		
1032	A:	No.
1033		Did CC / weathereafteries was any type of ween
1034	Q:	Did you or any other officer to your, uh, recollection use any type of weap-
1035		any type of instrument that can be used as a blunt object?
1036		
1037	A:	No.
1038		
1039	Q:	A- and did you or any other officer use your firearm?
1040	(4	A Property of the Control of the Con
1041	A:	No.
1042		The state of the s
1043	Q:	Did – was a firearm used in any way as a blunt object?
1044		
1045	A:	No.
1046		11 City Land of your recollection any other
1047	Q:	Okay. Um, let's see. Do you recall of the best of you recollection any other
1048		officers who were on scene other than those that you've mentioned so far?
1049		
1050	A:	A- up in the a- apartment?
051	_	
1052	Q:	S- up in the apartment.
1053		77 1 37
1054	A:	Yeah. No.
1055		WY 1 . 111 11 1
1056	Q:	(Unintelligible) no.
1057		TD1 12 14
1058	A:	That's it.
1059		O1 - III bet about outside while you were leaving and 1th you were
1060	Q:	Okay. Uh, what about outside while you were leaving and, uh, you were
1061		outside waiting to be relieved?
1062		Um – uh, (Andrew Franco) was there. Um, (Tim Kaplan) and, um
1063	A:	Um – un, (Andrew Franco) was there. Um, (Tim Rapidir) and, ant
1064	0.	Olray
1065	Q:	Okay.
1066	Α.	that's it. That was as far as I remember.
1067	A:	that S it. That was as fai as I remember.
1068	0.	(Harry), anything?
1069	Q:	(Hally), anything:
1070	02.	No, thank you.
1071	Q2:	No, mark you.
1072	0:	Um, is there anything you want to, uh, add that we may benefit from
973	Q:	knowing?
1074		MIO WITE:
-1075		

INTERVIEW WITH OFC. (TIMOTHY) GARDNER Interviewer: Sgt. Hong, Det. Johnson & Harry Stern 02-13-13/6:14 pm Case # 2013-08510 Page 25

1076	A:	Um, I would just say that – that we did our best and that I saw every officer
1077		behave very professionally.
1078		
1079	Q:	Okay. Good. (Unintelligible). All right. It is, uh, 1847 hours. This concludes
1080		the interview, uh, Officer Gardner, G-A-R-D-N-E-R.
1081		
1082		v.
1083	This transcript ha	as been reviewed with the audio recording submitted and it is an accurate
1084	transcription.	
1085	Signed	

1	BERKELEY POLICE DEPARTMENT
2	
3	
4	CASE NO. 13 - 065-10
5	CASE NO. 13 - 06 5-10 (PRINT) DATE
6	DATE
7	
8	
9	STATEMENT TO INVOLVED OFFICER:
10	SET
11	Officer CARDOZA, you are being represented here at this interview by
12	your attorney, HARRY STERF. You are not in custody and you are free to
13	
14	conclude the interview at any time. You are not obligated to answer any questions.
15	Any answers you do give may be used in a court of law. Having this in mind, do you
16	
17	wish to voluntarily proceed with the interview?
18	
19	
20	SEDJANTO CARDOZA SIGNATURE
21	
22	ATTORNEY NAME SIGNATURE
23	Down the same
24	INVESTIGATOR NAME SIGNATURE
25	

1			×
2			
3			
4 5			
6			9
7			INTERVIEW WITH SGT. (BEN) CARDOZA
8			Q=Sgt. Hong
9			Q1=Det. Johnson
10			Q2=(Harry) Stern
11			A=Sgt. (Ben) Cardoza
12			
13	-		OL EL 2000 hours Interview with Sargeont (Ren) Cardo73 C-A.
14	Q:		Okay. February 13, 2009 hours. Interview with Sergeant (Ben) Cardoza, C-A-R-D-O-Z-A. Uh, this is Sergeant Hong, H-O-N-G.
15			R-D-U-Z-A. On, this is sergeant frong, fi-O-N-G.
16	01.		Detective Johnson, J-O-H-N-S-O-N, badge 26.
17 18	Q1:		Detective Johnson, J. O. 11 1. S. O. 1., Gange 2.
19	Q2:		I'm (Harry) Stern, S-T-E-R-N.
20	Q2.		
21	A:		Sergeant Cardoza, C-A-R-D-O-Z-A.
22			
23	Q:		And Sergeant Cardoza, you signed your, uh, waiver?
24			
25	A:		Yes.
26	0		Okay. All right. So, um, to begin with, uh, c- could you state your rank and
27	_ Q:		badge number?
28 29			bauge number:
30	A:		Police sergeant, badge S31.
31	71.		
32	Q:		Uh, what was your, uh, date of hire with Berkeley Police Department?
33		9	
34	A:		My initial date of hire was I believe July 12 of 99 and I was sworn in middle
35			of December of 99.
36	_		2 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1
37	Q:		Do you have any prior law enforcement experience outside of the Berkeley
38			Police?
39 40	A:		No.
41	A.		110.
42	Q:		Uh, which patrol operations team do you currently work?
43	Α.		
44	A:		Team three.
45			

46 47	Q:		Uh, what are the normal days worked and normal hours worked for team three?
48 49	A:		Monday through Thursday from 1530 to 0130.
50 51 52 53	Q:		Okay. Today's date is currently the 13th as you know. When I say the word yesterday I'm meaning the shift of, uh, February 12, Tuesday, okay?
54 55	A:		Okay.
56 57	Q:		So what was your call sign during yesterday's shift?
58 59	A:		S31.
60 61	Q:		And what area do you cover as a, uh – as S31?
62	A:		The city.
63 64	Q: ,		Okay. So your - your role as a, uh, sergeant is i- uh, i- is what?
65 66	A:	9 .	A patrol supervisor.
67 68	Q:		Uh, who was your supervisor at the time of yesterday's incident?
69 70	A:		Lieutenant (Files).
71 72	Q:		Uh, is he your normal su- uh – uh, commanding officer?
73 74	A:		Yes.
75 76	Q:		Prior to yesterday's shift, when was the last shift you worked?
77 78	A:		Monday night.
79 80	Q:		Got it. Okay. And was it the same hour?
81 82	A:		Yes.
83 84	Q:		All right. Do you hold any secondary employment or jobs?
85 86	A:		No.
87 88 89 90	Q:		Did you work any overtime after yesterday's shift or prior to yesterday's shift?

91	A:	After yesterday's shift documentation but not
92 93	Q:	Okay, extended.
94 95	A:	Yes.
96 97	Q:	Okay.
98 99	A:	Extended.
100 101	Q:	But prior to yesterday's shift would you – did you work any overtime?
102 103	A:	No.
104 105	Q:	Have you taken any medication, prescription or otherwise?
106 107	A:	Advil.
108 109	Q:	Advil. Have you consumed any alcohol in the past 24 hours?
110 111	A:	No.
112 113	Q:	Do you have any medical conditions?
114 115	A: •	
116 117 118	Q:	
119 120	A:	
121 122	Q: -	
123 124	A:	
125 126	Q:	Okay. Uh, when was the last time you slept, uh, prior to yesterday's shift
127 128 129	A:	Uh
130	Q:	and how long?
131 132	A:	the night prior approximately seven hours.
133 134 135	Q:	Seven hours. Okay. Uh, did you sustain any injuries during yesterday's incident?

136			
	۸.		No.
137	A:		NO.
138	_		D
139	Q:		Do you wear corrective eyeglasses or contact lenses?
140			
141	A:		No.
142			
143	Q:		Starting from your, uh, front belt buckle going clockwise could you describe
144	Q.		what duty gear is on your duty belt?
			what duty godi is on your daty bott.
145			11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
146	A:		My cell phone holder, my sidearm, a handcuff case, a radio holster, a
147			flashlight, a collapsible baton holster, and magazines.
148			
149	Q:		Okay. Did your duty belt or duty gear sustain any damage from yesterday's
150	ζ.		incident?
151			11101004101
	A .		No
152	A:	à]	No.
153			1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
154	Q:		Okay. What vehicle make and model were you driving during yesterday's
155			shift?
156			
157	A:		A Ford Crown Victoria Police Interceptor.
158	11.		1
	0.		And what vehicle number?
159	Q:		And what vehicle number:
160			
161	A:		1722.
162			
163	Q:		And what kind of markings and emergency equipment is on this vehicle?
164	•		
165	A:		Uh, it's a fully marked police vehicle.
	, A.L.		On, it is a rolly invarious possible to
166	0		Emanganas, lighto?
167	Q:		Emergency lights?
168			
169	A:		Yes.
170			
171	Q:		All right. Do you normally drive this particular vehicle?
172			*
173	A:		Maybe.
174	11.		nay 500
	0.		All right. Uh, you have, uh - you have a series of four different vehicles you
175	Q:		
176			drive, uh, as a supervisor, correct?
177			
178	A:		Yes.
179			
180	Q:		Okay. And 1722 is one of them?
100	۷.		

		W
181		18
182	A:	Yes.
183		· · · · · · · · · · · · · · · · · · ·
184	Q:	All right. Uh, and you're a single car supervising vehicle, correct?
185	ζ.	
186	A:	Yes.
	Α.	1 05.
187		All 1 L. II. D'I D'I and the analise money who we consider
188	Q:	All right. Um, okay. Did you complete a police report, uh, regarding
189	767	yesterday's incident?
190		
191	A:	No.
192		
193	Q:	Okay. Um – uh, so we're gonna get – we're gonna start speaking about the
	Q.	incident, uh, from yesterday. We're gonna go step by step. And so, um, if you
194		can start by telling us, uh – uh, n- the incident location is, um, 2116
195		
196		(Austin)
197		
198	A:	Yes.
199		
200	Q:	apartment 514?
201	4.	
202	A:	Yes.
	$A_{\cdot \cdot}$	1 C5.
203		or 1 1 1' 14 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
204	Q:	Okay. And a subject that, $uh - uh$, of interest, uh , that we're speaking about is
205		a person, (Xavier), uh, (Moore).
206		
207	A:	Yes.
208		
209	Q:	And he's a deceased (unintelligible). So did you go to 2116 (Austin)
210	₹.	apartment 514 yesterday?
		uparamone of the obstacle.
211	A.857	V
212	A:	Yes.
213		
214	Q:	Okay. Can you tell us why you went there?
215		III
216	A:	I responded to the scene affis- after officers on scene requested code three
217		cover.
218		
219	Q:	Do you remember who requested code three cover?
	Q.	Do you tememoor who requested bear the sever.
220	A	I believe it was Officer Brown.
221	A:	I believe it was Officer brown.
222		
223	Q:	Do you – can you recall any of the verbiage you used on the radio traffic?
224		
225	A:	I - I can't.

226 227	Q:	Okay. But to your, um, interpretation of the radio traffic you felt as though it
228		was a code three request?
229		
230	A:	Yes.
231	11.) · · · · · · · · · · · · · · · · · · ·
232	0.	Okay. So where were you responding from when you heard this radio
	Q:	broadcast?
233		bloadcast:
234	A .	From the station.
235	A:	Fioni the station.
236		Ol Come the station And who when you left the station did you know what
237	Q:	Okay, from the station. And, uh, when you left the station did you know what
238		type of call Officer Brown was, uh, involved in?
239		
240	A :	I knew what the initial call was.
241		
242	Q:	What would it have been?
243		
244	A :	I believe it was a schizophrenic individual possibly off their medications and
245		drunk or something to those effect.
246		
247	Q:	Okay. So you f- responded from the station and then when you arrived what
248	Q.	did you do after you, uh, parked your vehicle?
249		ald jou do altor jour, has, passed you
	A:	I entered the building, took the elevator to the fifth floor, and I guess found
250	A.	apartment 514.
251		aparunent 314.
252	0	Did you go up the elevator by yourself?
253	Q:	Did you go up the elevator by yourself?
254		X1 1 Compared (DL:11: pa) was with mo
255	A:	I believe Sergeant (Phillips) was with me.
256		1 G (DLilling) amirred approximately
257	Q:	Okay. So I'm assuming you and Sergeant (Phillips) arrived approximately
258		about the same time then?
259		
260	A:	Yes.
261		
262	Q:	Excuse me. Did you and Sergeant (Phillips) discuss anything on the elevator
263		on the way up?
264		
265	A:	No.
266	12.	= 1.2.1 II
267	0.	And, uh, you were ultimately able to find apartment 514?
	Q:	Thin, and Journal administry were in the second
268	۸.	Yes.
269	A:	168.
270		

271 272	Q:	Okay. So can you describe, uh, the, uh – the area of this apartment and, uh, before we discuss what – what you saw inside?
273		
274	A:	The – the apartment is located on the north side of the building. There's a
275	71.	central courtyard in the building. When you exit the elevator you go north or
		left and wind your way around and I think it's – it's almost in the middle of
276		that north side.
277		mat norm side.
278		or a 1 ' 1 1 ' 1 must be white one to enortment 51/
279	Q:	Okay. So when you arrived and was, uh – was the, uh, door to apartment 514
280		open or – or closed?
281		2
282	A:	Open.
283		
284	Q:	Okay. Okay. Was there any officers in the hallway when you first arrived?
285		*
286	A:	I don't believe so.
287	1 1.	
288	0.	Okay. Okay. So when you looked into the apartment through the open door,
	Q:	describe for me what you saw to the best of your recollection.
289		describe for the what you saw to the sest of your resolutions.
290	9	When I looked inside there was a group of officers restraining an individual
291	A:	on a mattress inside I guess it's be like, the main room of the apartment
292		on a mattress inside I guess it's be like, the main room of the apartment.
293		towards the – the east wall of the apartment. The mattress was on the floor and
294		the officers were on top of the individual. The individual was screaming and
295		actively resisting, both kicking and fighting the officers.
296		17 1 11 1
297	Q:	Okay. Before we get to some more specifics, do you recall when you arrived
298		can you tell us the names of the officers that were inside the apartment? Not
299		what they were doing, but all the officers that were inside the apartment when
300		you arrived. Can you recall?
301		
302	A:	I can recall some of them, not
303		
304	Q:	Okay, the ones that you recall, can you c-tell us their name - their names?
305	Q.	Charles and and and a second an
	۸.	Officer Mathis, Officer Brown, Officer Tu, and I know there were several
306	■A:	others but those were the – what I remember seeing.
307		Officis but those were the what I follower seeing.
308		Okay. Officer Mathis, M-A-T-H-I-S, Officer Brown, B-R-O-W-N, Officer Tu,
309	Q:	UKAY. UTHICET MAILINS, MI-A-1-FI-1-S, UTHICH DIOWII, D-K-0-W-1, OTHICH III,
310		T-U. And there was several other officers. Okay. Got it. Now you said that,
311		um, when you, uh, looked in at officers – at – at least Officers Mathis, Brown,
312		Tu, and potentially others were in a fight with the, uh – with, uh, Mr. (Moore).
313		Uh, you said that Mr. (Moore) was screaming. Can you recall what exactly
314		words he was screaming or what he was saying?
315		

316 317	A:		No, I can't.
318 319 320	Q:		Okay. While we're on topic can you recall if Mr., $um - Mr$. (Moore) at any time you heard him ask or say that he was, uh , hurt in $-$ in any fashion, needed an ambulance, or needed emergency medical attention in any fashion?
321 322	A:		No.
323 324 325 326 327	Q:		And you said there were officers on top of Mr. (Moore). Could you describe for me which — can you tell me which officers were on top of (Moore) and in what fashion? Uh, like, why would you — what would be them being on top of (Moore)? How could you de- how would you describe that?
328 329 330	A:		The only one I can truly describe is Officer Mathis and I don't know if on top is a correct word but he was attempting to restrain Mr. (Moore)'s legs.
331 332 333	Q:		Okay.
334 335	A:		The other officers were attempting to restrain I believe arms and m-just basically restrain Mr. (Moore).
336 337 338 339	Q:		Okay. Uh, Mr. (Moore)'s body during this restrain attempt process – uh, was the body on top of the mattress or on the ground?
340 341	A:		I believe it was the mattress.
342	Q:		Okay. Was Mr., uh, (Moore)'s f- face down or face up?
344 345	A:		Face down.
346 347 348	Q:		Okay. So would it be fair to say that, uh, him being face down he was lying on the front of his body 'cause – meaning his chest, stomach, legs?
349 350	A:		Yes.
351 352 353 354	Q:		Okay. And do you recall – now you said m- Officer Mathis was trying to restrain Mr., uh, (Moore)'s legs or ankles. And do you recall exactly if you can remember w- uh, what Officer Brown's positioning was?
355 356	A:		I can't remember.
357 358	Q:		Can you remember Officer Tu's positioning?
359 360	A:	H	No. 235

361 362	Q:	Okay. Um, do you know – do you assist in the physical struggle?	remember if it was Officer – did you at all
363 364 365	A:	No.	
366 367 368	Q:	Okay. Do you recall if Officer f- or uh, officers in the physical struggle	Sergeant (Phillips), uh, attempted to assist, ?
369 370	A:	I don't believe so.	0
371 372	Q:	Okay. You're not sure?	
373 374	A:	Not sure.	
375 376	Q:	Okay. Um, would you characterize	Mr. (Moore) as fighting the officers?
377 378	A:	Yes.	
379 380 381	Q:	Okay. Could you describe why you officers as opposed to complying?	believe Mr. (Moore) was fighting the
382 383 384 385	A:	He was actively resisting. He was a officers. He was squirming around compliant with the officers.	ttempting to use his feet to kick the on the mattress, just moving and not
386 387	Q:	Did you hear any commands by off	icers for compliance?
388 389	A:	I don't recall.	
390 391 392	Q:	So the struggle is continuing. Event some fashion?	ually, um, is Mr. (Moore) controlled in
393 394	A:	Yes.	
395 396 397	Q:	Okay. Could you describe what you controlled?	mean by he's con- by how s- he's
398 399 400 401 402	A:	then Officer Mathis was able – on n just in case and from the nature of it	s were eventually able to handcuff him and my way up the elevator I brought a wrap and I guess while on the elevator they to control Mr. (Moore)'s ankles by just the wrap and that was it.
404 405	Q:	Okay. And when you say, uh, the of uh, (Moore), uh, w- is there a standa	ficers were successful in handcuffing Mr., and handcuffing that they did

406		
407	A:	I
408		
409	Q:	to the back?
410		
411	A:	I don't recall how they did it but at some point he was handcuffed behind his
412		back.
413		
414	Q:	Okay. Um, okay. So he's handcuffed and you noticed that, uh – was the leg
415		restrain successful as well – the ankle restraint?
416		
417	A:	I believe so.
418		1 1 Mr (Manus) however
419	Q:	Okay. Um, now after the res- restraints were placed on Mr. (Moore) how was
420		his demeanor, behavior, w- did it change?
421		
422	A:	While I was still there he was still resisting and still screaming.
423		11 1 1
424	Q:	And at this point can you recall what he was screaming?
425		Ti Ti
126	A:	No.
427	_	or the control of the control of the point thing that you
428	Q:	Okay. All right. So, uh – so then what – what – what's the next thing that you
429		recall happening then?
430		To the living on that minute or so offer he's restrained uh
431	A:	For myself at some point during or that minute or so after he's restrained, uh,
432		BFD was contacted via dispatch and I had gone down to basically meet up with the engine and the ambulance to advise what we needed and to check on
433		
434		- or basically what we required from them.
435	0.	Okay. So when, uh - when you said that, uh, BFD was - was notified via the
436	Q:	police radio – is that correct?
437		ponce radio – is that correct:
438 439	۸,	Yes.
440	A:	163.
440 441	0.	All right. What was the request need?
441	Q:	All light. What was the request heed.
443	A:	I believe it was for a medical evaluation and, um, a gurney.
444	A.	1 bollove it was for a medical evaluation with the grands
445	0.	Do you know why, uh, specifically a gurney was requested?
443 446	Q:	Do Joa mion mily and operationally a Barrery and an American
447	A:	B- because of Mr. (Moore)'s size and I believe his combativeness. There was
148	11.	no way he was gonna be walked out of the
449		no way no was Borner or warrant and a
450	Q:	Okay, the apartment?
750	٧٠	Only, the apartment.

451			
452	A:		Correct.
453			
454	Q:		Okay. Okay. So when you left the apartment to, uh, make sure BFD finds their
455			way to the apartment you're saying that mis- at that point Mr. (Moore) was
456			still in a active, uh, res- resisting mo- he was resisting?
457			
458	A:		Yes.
459	11.		
460	Q:		Even though the handcuffs were on and the ankle tie was ma- uh, ankle
461	۷.		restraint was done when you left he was still in the, uh, physical, um, act of
462			resisting?
463			1001011115.
464	A:		Correct. He was still agitated
465	A.		Concet. He was sim agreated
	0.		Okay.
466	Q:		Okay.
467	۸.	*	and atill
468	A:		and still
469	0		All winds All right When you left the legt negition you saw Mr. (Moore) was
470	Q:		All right. All right. When you left the last position you saw Mr. (Moore) was
¥71			what position – his body?
472			
473	A:		Face down on the mattress.
474			
475	Q:		On the mattress?
476			
477	A:		Yes.
478			
479	Q:		Okay. All right. Now you said specifically, uh, that, um - scratch that. During
480			your time inside the apartment did you at all ever see officers putting their, uh
481		€	- um, fully on top of Mr. (Moore)?
482			
483	A:		Not that I can recall.
484			2
485	Q:		Do you recall at all seeing any officers, uh, on top of Mr. (Moore)'s head?
486			
487	A:		No.
488			ting the second
489	Q:		Mr. (Moore)'s neck?
490			
491	A:		No.
492			
193	Q:		Chest area?
494	ζ.		
495	A:		I can't recall.
173			

496		20	2.8	
497	0.0		Okay. Uh, like, stomach area?	
498	Q:	35	Okay. Oil, fixe, stomach area:	
499	۸.		Uh, I can't recall.	
	A:		On, I can t recan.	
500	•		Ol III 1-42 Did Image of a second arrived arrived arrived arrived arrived arrived the	
501	Q:	8	Okay. Uh, let's see. Did you know when you arrived why – what was the	
502			officer's intent on handcuffing? What was the purpose of handcuffing? What	ŗ
503			was the ultimate goal f- for Mr. (Moore)? W- what did the – what did the	
504			officers want to do with Mr. (Moore)?	
505	32	8		
506	A:	34	I don't know what the ultimate goal was but I believe at that time it was just	to
507		90	restrain – restrain him.	
508				L
509	Q:		Oh i- restrain a combative person?	
510		*	*	
511	A:	253	Correct.	
512				
513	Q:		But you didn't know w- why they were trying to restrain him w- why they -	
514			they felt it was necessary to restrain him? You didn't know at that point?	80
515		34		
316	A:		No.	
517	11.			9
518	Q:		Got it. Okay. All right. Did you at all during your time inside the apartment	
519	Q.		ever see any of the officers strike Mr. (Moore) in open hand or closed – close	ď
520	ž:		h- fist?	7
521		5.	ii- list:	
	A .		No.	
522	A:		110.	2 2
523	ο.		Did you at all ever see any officers strike Mr. (Moore) with a baton?	
524	Q:		Did you at an ever see any officers strike tvir. (tvicore) with a catch:	
525			B.T.	
526	A:	94	No.	
527			D'11 and the state of the state	50
528	Q:		Did you at all an- see any officers deploy and use their OC spray?	
529	×			
530	A:	8	No.	
53 1·		v.		
532	Q:		Did you at all ever – ever see any officer use any object in the room or on	
533			their belt that is of – that's hard in nature to strike Mr. (Moore) with?	
534		6	w w	
535	A:		No.	
536			. ×	
537	Q:		Did any of the officers discharge a firearm?	
538	-		a a second and a second a second and a second a second and a second a second and a second and a second and a	
539	A :	×	No.	
540	177	(4)	230	

541 542	Q:		Did any w- officers use their sidearm or their duty pistol to hit Mr. (Moore) with?
			WIGHT:
543			NT.
544	A:		No.
545			
546	Q:		Okay. Um – um, and also kicking. Did you see any officers kick Mr. (Moore)?
547			
548	A:		No.
549			
550	Q:		And after you left to make – ensure that BFD will find their way back – so
551			you went down?
552			7 • • • • • • • • • • • • • • • • • • •
553	A:		Yes.
	A.		1 63.
554	0		Dut way to all the alexator?
555	Q:		But you took the elevator?
556			
557	A:		Yes.
558			
559	Q:		And when you went down and you waited – so tell us b- what happened after
560			when you went down.
561			
562	A:		I went down, waited I don't know less than a minute or so, and as the engine
563			rolled up – the fire department engine rolled up I heard over the air one of the
564			officers say I believe starting CPR.
565			<u> </u>
566	Q:		Okay.
	Q.		Ordy.
567	Α.		And I advised the paramedics that the nature of the call had changed from
568	A :		what I guess they initially said and said that officers were starting CPR on the
569		2	what I guess they initially said and said that officers were starting of R on the
570			individual. And then myself and the fire engine crew went back up the
571			elevator.
572			
573	Q:		So you accompanied the paramedics to the apartment?
574			
575	A:		Yes.
576			
577	Q:		Okay. Once you arrived back at the apartment with the, um, paramedics, what
578			was your observations of what was going on?
579			*1
580	A:		From what I saw is I entered the apartment. Mr. (Moore) was on his back now
581	11.		to the – I guess to the left of the mattress so on the floor. I'm pretty sure hi- he
			was uncuffed. The, uh – the leg restraint was still on him so the – the strap
582			was still on him. And Officer Tu is doing chest compressions on Mr. (Moore).
583			was sum on min. And Officer 14 is doing enest compressions on wir. (whole).
584			A 1 0 the manualine amined they test even the CDD message?
585	Q:		And after the paramedics arrived they took over the CPR process?

586		
587	A:	Yes.
588		
589	Q:	All right. So, um, paramedics are doing the CPR and then I'm assuming if this
590		is correct that they're loading Mr. (Moore) onto a gurney and taking him -
591		took i- with the intent to take him to the hospital?
592		
593	A:	Yes.
594		
595	Q:	Did that all occur? He was taken outside the apartment with the paramedics
596	Α.	and taken to the hospital?
597		and the total of the conference
598	A:	Yes.
599	A.	165.
	0.	Okay. Uh, after Mr. (Moore) has now left with the paramedics, um, what you
600	Q:	as a, um, h- let me ask you this. Who was considered, uh, the scene supervisor
601		at this incident?
602		at this incident:
603	Α.	Two
604	A: •	I was.
605		Ol G argumed good gymawigan's uh role?
506	Q:	Okay. So you assumed scene supervisor's, uh, role?
607		77
608	A:	Yes.
609	_	Ol Ol D'1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
610	Q:	Okay. Okay. Did you make any type of assignments or, um – uh, tasks?
611		¥1
612	A:	Yes.
613		1 10 11 11 11 11 11 11 11 11 11 11 11 11
614	Q:	Okay. Could you rem- do you remember if you can recall (unintelligible) what
615	27	kind of assignments you made?
616		
617	A:	I directed Officer (Cassinor) to obtain a written statement from one of the
618		individuals who I guess we later determined was inside the apartment initially.
619		Believe another officer had gone to the jail to book another individual that
620		was in the I guess apartment or well, I believe it ended up being the reporting
621		party.
622		
623	Q:	Mm-hm.
624		Y .
625	A:	And I also made sure that officer was gonna take a written statement from that
626		individual. Uh, I directed believe it was Officer Mathis and Officer
627		(Macintosh) to do a neighborhood check. I requested for the ID tech to come
528		and photograph the scene. And – oh, prior to all of that while the fire
629		department was working on Mr. (Moore) I notified the on duty watch
630		commander about the incident and what had happened.
550		241

631		
632	Q:	Okay,
633		
634	A:	And believe at that point in time that was it.
635		×
636	Q:	Okay. Um, did you have $a - I$ 'm $- I$ 'm assuming you had a chance to observe
637		Mr. (Moore). Do you – would you, um, characterize Mr. (Moore) based on
638		your training and experience and I don't know the specifics on your training
639	8	and experience in this, uh, topic but do y- would you consider, uh, Mr.
640		(Moore) as been – being under the influence of some type of – under the
641		influence of drugs or alcohol?
642		minutine of mage of meeting.
643	A:	Possibly.
644	A.	1 Ossibly.
645	0.	Possibly. Okay. But you can't be certain?
	Q:	rossibly. Okay. But you can t be certain.
646	A .	ΝTo
647	A:	No.
648		Olera Van recognification want hands on with Mr. (Moore)?
649	Q:	Okay. You yourself never went hands on with Mr. (Moore)?
650		NT.
551	A:	No.
652	_	1 111 0
653	Q:	Never touched him?
654		
655	A:	No.
656		
657	Q:	Okay. Um, have you ever had any prior contacts with Mr. (Xavier Moore)?
658		
659	A:	No.
660		
661	Q:	Do you have any prior knowledge of Mr. (Xavier Moore)?
662		
663	A:	No.
664		
665	Q:	And let me take a pause and think (unintelligible) anything?
666		
667	Q1:	(Unintelligible).
668		
669	Q:	Mr. Stern?
670		
671	Q2:	Sure. I have a quick one. During the time you were in apartment 514 and you
672	* 50	had the opportunity to observe the struggle did Mr. (Moore) ever say anything
573		like, "I'm having trouble breathing."?
674		,
675	A:	Not that I recall.
015	4 3 4	2/13

676		
677	Q2:	Okay. Anything like the request for medical assistance that you heard?
678		
679	A:	Not that I recall.
680		
681	Q2:	Okay.
682		
683	Q:	Um, inside the apartment did you see in plain view anything that you felt was
684		illegal contraband, weapons, or anything?
685		g
686	A:	Yes.
687	1 X.	105.
	0.	What did you see?
688	Q:	what did you see!
689		TI C 1 1 ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '
690	A:	There was a cap of a hypodermic s-syringe on the floor as well as a capped
691		syringe in I guess it would be considered the bedroom as well as a, uh, I
692		believe it was at least one or two pipes he used for smoking marijuana and
693		there were quite a few prescription pill bottles. I don't know if they were Mr.
694		(Moore)'s or not.
695	3.	
596	Q:	Okay. To you knowledge, um – let me ask you. Had – did – have you ever –
697		did you ever speak with Mr. (Moore)?
698		
699	A: "	No.
0,7,5		
700		
700 701	0.	Did you ever speak with the centlemen by the name of um
701	Q:	Did you ever speak with the gentlemen by the name of, um
701 702		+
701 702 703	Q: Q1:	Did you ever speak with the gentlemen by the name of, um (Hayes).
701 702 703 704	Q1:	(Hayes).
701 702 703 704 705		+
701 702 703 704 705 706	Q1: Q:	(Hayes). (John Hayes)?
701 702 703 704 705 706 707	Q1:	(Hayes).
701 702 703 704 705 706 707 708	Q1: Q: A:	(Hayes)(John Hayes)? No.
701 702 703 704 705 706 707 708 709	Q1: Q:	(Hayes). (John Hayes)?
701 702 703 704 705 706 707 708 709 710	Q1: Q: A:	(Hayes)(John Hayes)? No. Did you speak
701 702 703 704 705 706 707 708 709	Q1: Q: A:	(Hayes)(John Hayes)? No.
701 702 703 704 705 706 707 708 709 710	Q1: Q: A: Q:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)?
701 702 703 704 705 706 707 708 709 710 711	Q1: Q: A: Q:	(Hayes)(John Hayes)? No. Did you speak
701 702 703 704 705 706 707 708 709 710 711 712	Q1: Q: A: Q: Q1:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)?
701 702 703 704 705 706 707 708 709 710 711 712 713 714	Q1: Q: A: Q: Q1:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)?
701 702 703 704 705 706 707 708 709 710 711 712 713 714 715	Q1: Q: A: Q: Q1: Q:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)? And did you speak with any gentleman by the name of (Edward Sternum)? Other than asking him to wait while I spoke with the officer speaking with
701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716	Q1: Q: A: Q: Q1: Q:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)? And did you speak with any gentleman by the name of (Edward Sternum)?
701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717	Q1: Q: A: Q: Q1: Q1: A:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)? And did you speak with any gentleman by the name of (Edward Sternum)? Other than asking him to wait while I spoke with the officer speaking with him, no. So
701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717	Q1: Q: A: Q: Q1: Q:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)? And did you speak with any gentleman by the name of (Edward Sternum)? Other than asking him to wait while I spoke with the officer speaking with him, no. So Okay, and you had to speak with Mr. (Sternum) why? Because he was on
701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717	Q1: Q: A: Q: Q1: Q1: A:	(Hayes)(John Hayes)? No. Did you speak (Unintelligible) (Edward Sternum)? And did you speak with any gentleman by the name of (Edward Sternum)? Other than asking him to wait while I spoke with the officer speaking with him, no. So

721 722	A:	Correct.
723 724	Q:	Okay. Do you know what his relationship was to the apartment?
725 726	A:	I do – I do not.
727 728	Q:	You don't know?
729 730	A:	I be- believe he was a friend visiting or
731 732	Q:	Okay.
733 734 735 736	Q2:	When the officers are first – when you first showed up and saw the officers attempted to restrain him at that point would you say that he was verbal, he was yelling and making noise?
737 738	A:	Yes.
739 740 741 742	Q2:	This – that Mr. (Moore) was? Okay. Um, and you – at – at no point did you – I think you already asked this actually. Did you, um – and d- did appear that he was unable to make noise or breathe or any indication of that?
743 744	A:	Not while I was there.
745 746	Q2:	Okay. Um
747 748	Q:	Do you recall how he was dressed – Mr. (Moore)?
749 750 751 752	A:	I think he had what looked like a blanket or something – he was almost naked – just wrapped around his an- while the fight happened it needed up around his thighs. So
753 754	Q:	You said a blanket?
755 756	A:	Blanket or some type of sheet or something
757 758	Q:	Okay.
759 760	A:	to that
761 762 763 764	Q:	Um, okay. And, uh, I think you spoke earlier. You – you did, uh, complete some Berkeley Police Department, uh, documentation. What – what would have been those documentations you did?

765 766	A:	I completed a use of force report for the incident as well as a, uh, supervisor's log.
767 768 769 770 771 772	Q:	And I think one more last question I have is you said that you came to the apartment with Sergeant (Phillips). You recall Officer Mathis, Officer Brown, and Officer Tu to the best of your recollection. Can you tell us any other officers who were on scene, uh, inside or outside the apartment?
773 774	A:	At that point?
775 776	Q:	At
777	Q1;	At any
778 779 780	Q:	any time that you were there prior to leaving the entire, uh, incident scene. What other officers to your recollection was there?
781 782 783	A:	So the entire – after leaving the entire scene f- finishing the incident or
784 785	Q:	Dur- during the time that you were there at – at the apartment complex
786 787	A:	Okay.
788 789 790	Q:	inside the apartment, outside the complex do you recall other – which other officers may have showed up to assist in whatever fashion?
791 792 793 794 795	A:	Officer (Cassinor) was there. Officer (Gardner) was there. I – I saw Officer (Smith) there. I don't recall seeing him outside. I remember seeing him outside the building. He may have been inside earlier. Um, Officer (Macintosh). Y- uh, CSO (Jamison) was the ID tech. And I think that's all I can recall.
796 797 798 799	Q:	Okay. Other than yourself and Sergeant (Phillips) was there any other sergeant ranked, uh, officer there?
800 801	A:	Sergeant (Ross) was there but never inside the apartment building.
802 803 804	Q:	Okay. Was there any other ranking officer there other than officer or sergeant on scene?
805 806	A:	No.
307 808	Q: _{2,5}	(Unintelligible).
809	Q2:	No, thank you. 245

INTERVIEW WITH SGT. (BEN) CARDOZA Interviewer: Sgt. Hong 02-13-13/8:09 pm Case # 2013-08510 Page 19

810			
811	Q:	Is there anything you'd like to add that – that we may have missed or you	
812		think is, uh – uh – um, w- valuable for us to hear?	
813			
814	A:	No.	
815			
816	Q:	All right. End of the interview with Sergeant Cardoza. It is 2038 hours.	
817			
818	1		
819	This transcript ha	s been reviewed with the audio recording submitted and it is an accurate	
820	transcription.	* · · · · ·	
821	Signed		

BERKELEY POLICE DEPARTMENT

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2324

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DATE 02-13-13
(PRINT)

CASE NO. 13-04510

STATEMENT TO INVOLVED OFFICER:

Officer Brandon South, you are being represented here at this interview by

your attorney, Sarah Bord i'cle. You are not in custody and you are free to

conclude the interview at any time. You are not obligated to answer any questions.

Any answers you do give may be used in a court of law. Having this in mind, do you

wish to voluntarily proceed with the interview?

BRANDON SMITH

Sowah P. Burdich

ATTORNEY NAME

P. HONG

INVESTIGATOR NAME

SIGNATURE

SIGNATURE

1		
2		
2		
4		
5		
6		
7		INTERVIEW WITH OFC. (BRANDON) SMITH
8		Q=Sgt. Hong
9		Q1=Det. Johnson
10		Q2=(Sarah) Burdick
11		A=Ofc. (Brandon) Smith
12		
13		in OCC on (Durandom) Smith I am
14	Q:	February 13, 2045 hours. Interview with Officer (Brandon) Smith. I am
15		Sergeant Hong, H-O-N-G.
16		**************************************
17	Q1:	Detective Johnson, J-O-H-N-S-O-N, badge 26.
18		(S. 1) S. 11 1 (D. 1.) (Lealer) (Estern) D.H.D.D.I.C.K
19	Q2:	(Sarah) Burdick with (Raines), (Luche), (Estern), B-U-R-D-I-C-K.
20		on a way one (D. 1-1) Could C.M.I.T.H. hadge number 3
21	A:	Officer Smith - Officer (Brandon) Smith, S-M-I-T-H, badge number 3.
22		11 11 000 G 11 and drop state your renk and hadge number?
23	Q:	All right. Officer Smith, could you state your rank and badge number?
24		Law of Officer hadge number ?
25	A:	I am an Officer, badge number 3.
26	0.	And what was your uh, hi- what was your hire date with um, BPD?
27	Q:	And what was your un, m- what was your mro date with ans,
28	۸.	Uh, sworn date was December 13 of 2002.
29 30	A:	On, sworn dute was becomed to at 2002.
31	Q:	Do you have any prior law enforcement experience prior to uh, BPD?
32	Q.	Do you have only prior the same
33	A:	No.
34	11.	
35	Q:	Uh, which Patrol Operations Team did you work yesterday's shift?
36	ζ.	•
37	A:	Team 4.
38	1 1.	
39	Q:	Is that your normal uh, patrol team?
40	ζ.	
41	A:	Yes.
42		
43	Q:	From here on out if I say yesterday I'm referring to February 12, Tuesday.
44	~	Okay?
45		24

248

46	A:	Correct.
47		
48	Q:	Today is currently February 13, Wednesday. Um, what are you normal days
49		worked and normal hours worked?
50		
51	A:	Monday through Thursday, 8:30 pm to 6:30 am.
52		
53	Q:	What was your call sign during your shift yesterday?
54	100	
55	A:	4 Adam 5.
56	Ti.	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	0.	What beat is that uh, area?
57	Q:	What beat is that un, area:
58	4	D. 45
59	A:	Beat 5.
60		C 4l21.:60
61	Q:	Okay. Uh, who are your supervisors for yesterday's shift?
62		
63	A:	Sergeant Phillips and Sergeant Huynh.
64		
65	Q:	Sergeant Huynh is spelled uh, H-U-Y-N-H, Phillips P-H-I-L-L-I-P-S. Are
66		they your normal supervisors?
67		
68	A:	Yes.
69	11.	100.
	0.	Uh, prior to yesterday's shift when was the last shift you worked?
70	Q:	On, prior to yesterday s sinit when was the fast sinit year wester
71	¥	The winds aming
72	A:	The night prior.
73	10400	
74	Q:	Thank you. Which would be Monday?
75		
76	A:	Correct.
77		
78	Q:	Correct. Uh, do you hold any other secondary jobs or occupations?
79		
80	A:	No.
81	****	
82	Q:	Um, did you work any overtime prior to yesterday's shift?
83	۷.	om, are you were many to the many of the same party of
	۸.	No.
84	A:	NO.
85	0	Have you taken any medication, prescription or otherwise?
86	Q:	Have you taken any medication, prescription of otherwise:
87	a	YVI 1 discontinuing
88	A:	Uh, only over the counter vitamins.
89		
90	Q:	Have you consumed a- any alcohol in the past 24 hours?

91	N	
92	A:	No.
	A.	110.
93	0	Do you have any medical conditions?
94	Q:	Do you have any medical conditions:
95		
96	A:	No.
97		
98	Q:	Prior to yesterday's shift when was the last time you slept and how long?
99		
100	A:	Uh, I slept when I got off of work um, which would have been Tuesday
101		morning approximately 8:00 am and I woke up at approximately 2:30 to 3
102		o'clock in the afternoon.
102		O CHOOK III the Milesian
	Ο.	Okay. Did you sustain any injuries during yesterday's incident?
104	Q:	Okay. Did you sustain any injuries during yesterday 5 merdent.
105		
106	A:	No.
107		
108	Q:	Do you wear corrective eyeglasses or contact lenses?
109		
110	A:	Yes.
111		
112	Q:	What were you wearing yesterday?
113	٧.	
114	A:	Contact lenses.
	Λ.	Contact felibes.
115	0.	Regarding your uniform and duty belt, starting from the front belt buckle
116	Q:	going clockwise would you describe what - could you describe what duty gear
117		
118		is on your duty belt?
119		
120	A:	I have uh, a key silencer with keys. Next to that I have uh, a set of handcuffs
121		with a carrying case. To the right of that I have my duty weapon holster. Uh,
122		to the right of that as we circle around towards my back I have my OC
123		canister. On the left rear side I have a flashlight holder. Did not actually have
124		a flashlight in it. Um, next to that I have my radio holder and my radio. Next
125		to that I have a baton ring. Next to that I have an asp. Uh, then directly in front
126		on the left side I have my magazine case with magazines.
		on the left side i have my salegement of
127	- O.	All right. Did your duty belt or gear sustain any damage?
128	Q:	All light. Did your duty boil of goal sustain any durings.
129		X Y-
130	A:	No.
131		
132	Q:	What vehicle make and model were you driving during yesterday's shift?
133		
134	A:	It was a Ford Crown Vic. Um, the City identifier is 1744.
135		
		050

And what kind of markings and emergency equipment is on this vehicle? 0: 136 137 It's a black and white patrol vehicle with a Berkeley Police emblem on the 138 A: front doors, both driver and passenger side. It has LED lights on the top. 139 140 Okay. LED lights are the emergency lights? 141 Q: 142 Correct. A: 143 144 Do you normally drive this particular vehicle? 145 O: 146 Yes. 147 A: 148 Were you a single officer vehicle or a double officer vehicle? 149 0: 150 Single. 151 A: 152 All right. So you've prepared a supplemental police report regarding this 153 Q: incident, correct? 154 155 Yes. 156 A: 157 All right. And you have it in front of you at this time. Could you please read 158 Q: your police report uh, verbatim and uh, you know, we can listen - hear what 159 your police report reads? 160 161 Yes. Case Supplemental: On 2-12-13 at approximately 2354 hours I was 162 A: dispatched to 2116 (Alston) Way, Apartment 514 as a cover officer to a report 163 of a 5150 off their medication. I arrived on scene and met with Officer 164 (Brown), badge 16, and Officer Tu, badge 38, IFO the address. The RP 165 (Hayes) walked up to us and led us into the apartment complex. He said that 166 his roommate, (Moore), had kicked him out and needed to be 5150 ed. I went 167 upstairs with Officer (Brown), Officer (Tus) - Officer Tu, and (Hayes). 168 (Hayes) unlocked the apartment front door and Officer (Brown) called out to 169 (Moore). (Moore) came to the door and stepped out onto the landing and 170 appeared very agitated and angry. Officer (Brown) began speaking with 171 (Moore). And after Officer (Brown) verbally identified him, I conducted a 172 records check of (Moore) and (Hayes) with Telecom. During this time 173 (Moore) grew increasingly agitated and had difficulty staying on topic. 174 (Moore) was at times incoherent and rambled on about the F- FBI watching 175 him. (Hayes) was found to have a \$5000 warrant out of San Francisco. I told 176 (Hayes) about his warrant and that he was going to be arrested. (Hayes) was 177 cooperative and I walked him downstairs. I placed (Hayes) in handcuffs and 178 began to search him incident to arrest when over the police radio I heard 179 Officer (Brown) request Code 3 cover. I placed (Hayes) in the back seat of my 180

patrol car and ran back upstairs to Apartment 514. (Moore) was on the bed on his stomach resisting Officer Tu and Officer (Brown). Officer Tu had (Moore)'s right wrist in a handcuff and Officer (Brown) was trying to gain control of (Moore)'s left wrist. I helped Officer (Brown) get (Moore)'s left arm behind his back so that he could be placed in handcuffs. During the incident (Moore) continued to struggle and pull his arm away from us. As soon as (Moore) was placed into handcuffs other officers arrived and I went back downstairs to ensure that (Hayes) was still in the back of my vehicle and okay. I removed (Hayes) and searched him, removing all of his property from his person and placed it into a paper bag. Officer (Kaplan) transported (Hayes) to the Berkeley Jail and booked him for his warrant. I contacted (Hayes) in the Berkeley Jail and obtained a signed written statement from him. (Hayes) said in summary that he lives with (Moore) at 2116 (Alston) Way, Number 514. And they have known each other for about 15 or more years. He said that (Xavier) has used many drugs on a regular basis since he has known him and that he mostly uses crack and methamphetamine as well drinks alcohol daily to get drunk. He said that on 2-12-13 when he returned home around 5:00 to 6:00 pm that (Moore) was high on methamp- phetamine and was drunk. He said that when (Moore) is high and drunk he is mean and wants to fight. He said that (Moore) asked him for money to buy more alcohol and he told (Moore) no. (Hayes) said that (Moore) became very angry and wouldn't leave him alone. They were arguing and (Hayes) said that because he has a temper he decided to try to ignore (Moore). (Moore) then told him to just leave. (Hayes) said he then called the police who took him to the apartment where they spoke with (Moore). He said that (Moore) was acting ziggity boom like a motherfucker, quote, end quote. When asked what that meant (Hayes) said that he was acting like he does when he's really high and drunk, quote, end quote. (Hayes) said that (Moore) had threatened him earlier and thought that (Moore) would attack him and that is why he left. He said that (Moore) had a history of violence and he had stabbed someone in San Francisco a few years pri- prior. See (Hayes)'s signed written statement for further. Nothing further to report.

Okay. Do you have any (unintelligible)?

I do. Yes.

All right. So you were on routine patrol. And were you dispatched to this call?

I was.

221
222 Q: And you were dispatched along with which officer?

224 A: Officer (Brown). 225

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Q:

Q2:

Q:

A:

226	Q:		And who else?
227 228	A:		Officer Tu was in the area and attached himself to the call.
229 230	Q:		And you were um, I'm sorry - Adam uh
231 232	A:		Adam 5.
233234235	Q:	<u>-</u>	Adam 5. Okay. Did you - did you all arrive approximately about the same time together?
236237238	A:		Officer Tu and Officer (Brown) were on scene when I arrived. Um, and they had just arrived.
239240241	Q:		All right. And when they arrived were they already speaking with Mr. (Hayes) or - or
242 243	A:		No. They were standing IFO the apartment complex.
244 245	Q:	8	Okay. And so when you arrived the three of you spoke to Mr. (Hayes)?
246 247	A:		Yes.
248 249	Q:		Okay. Um, um, do you recall um
250251	Q2:		Did you want to ask me something?
252 253	Q:		Huh?
254 255	Q2:		Did you want to ask me something?
256 257	Q:		No.
258 259	Q2:		Oh, okay.
260 261 262	Q:		And again a summary of what Mr. (Hayes) told you again to the best of your recollection?
263 264 265 266 267 268	A:	x.	Um, he was very upset about being kicked out of his apartment. He said that his roommate um, was uh, was a psy- or schizophrenic; was not on medication um, and was drunk and high. Basically it sounded like there was a - an argument about why he got kicked out. And he believed that um, (Moore) needed to be taken to a psychiatric facility.
269 270	Q:		Did he say why?

271			
272	A:		He just said he needs to be 5150'ed. He's crazy.
	A.		The just built no needs to be a seed and a seed and a seed and a seed and a seed a seed and a seed a
273	0		He used that term < 5150?
274	Q:	0.5	He used that terms - 2150:
275			
276	A :		Yes.
277			
278	Q:		Okay. Did he say anything about weapons or anything like that?
279			
280	A:		Um, when we asked if there was any weapons - if he had any weapons he said
281			that there was uh, there were knives in the kitchen but that he didn't know that
282			- if (Moore) had any on him.
283			1 (1.100.0)
	0.		Okay. Did he tell you if anybody else other than (Moore) was in the
284	Q:		
285			apartment?
286			77 1 111
287	A:		Uh, he did not.
288			11.C. form many invest
289	Q:		Okay. And uh, based on this information you - all four of you now just
290			proceeded back up to the uh, apartment?
291			
292	A:		Соггест.
293	111		
294	Q:		Okay. Um, did you bring any special equipment with you other than your
	Q.		standard duty belt and your uniform?
295			Standard duty bort and your announce
296			NI-
297	A:		No.
298			a 10 occ (D) Officer To and Mr (Hayes) go up to the
299	Q:		So yourself, Officer (Brown), Officer Tu, and Mr. (Hayes) go up to the
300			apartment. And when you arrived uh, at uh, Apartment 514 was the door open
301			or closed?
302			
303	A:		It was closed.
304			
305	Q:		Okay. Uh, who uh, and Mr you said Mr. (Hayes) assisted in entry? Is that
306	ζ.		correct?
307			
	۸.		Correct. He used his key to unlock and open the door.
308	A:		Coffeet. He asod his key to almost and of
309			N 1
310	Q:		Mm-hm.
311			
312	A:		And then he stepped to the side.
313			
314	Q:		Okay. Uh, were you at this point able to see inside?
315			
			254

316	A:	Um, it was only cracked maybe 6 inches. So what I could see was just a wall.
317 318	Q:	Which officer to your best recollection was the first to address Mr. (Moore)?
319 320	A:	Uh, that would have been Officer (Brown).
321 322	Q:	Okay. Do you recall what she said?
323 324 325 326	A:	Uh, she - I think she yelled out um, "(Xavier)," which is Mr. (Moore)'s first name. Um, she yelled out, "(Xavier)," um, and I heard somebody answer and come to the door. And then a conversation started.
327 328 329	Q:	Okay. And when - and Mr. (Xavier) uh, came to the door did he step outside the threshold or did he stay - stay in the doorway?
330 331	A:	He opened the door and stepped partially out onto the landing.
332 333 334 335	Q:	Okay. And that's where uh, he continued the conversation with Officer (Brown)?
336	A:	Correct.
337 338 339	Q:	While Officer (Brown) is en- is engaging Mr. (Moore) in conversation uh, what were you doing?
340 341 342 343 344 345	A:	Um, I was just listening and being a cover officer. Uh, the - the landing we were on, there was uh, like 4 foot from the door was just a railing and then a drop five floors. So if anything went bad I wanted to make sure that we weren't gonna get thrown over the - the landing. So I was - I was in close proximity.
346 347 348	Q:	Okay. L- how many feet away were you from m- Officer (Brown) and Mr. (Moore)?
349 350	A:	Um, 4 feet.
351 352 353	Q:	Okay. So you can overhear their conversation?
354 355	A:	Yes.
356 357	Q:	What was the summary of Officer (Brown)'s conversation with Mr. (Moore)?
358 359 360	A:	Um, they were speaking - Officer (Brown) was asking questions about what was going on um, informing more why we were called. And um, (Moore) was r- their r- his replies were um, very random and not on topic.

261		
361 362	Q:	You mentioned he - he - he spoke of the FBI?
363	7	
364	A:	Correct.
365	W.	
366	Q:	Okay. What was he saying about the FBI?
367	٧.	
368	A:	Um, that the FBI was watching him. Um, I recall him saying something
369	$oldsymbol{\Lambda}_{rac{1}{2}}$	similar to um, that he had to talk to the FBI to see if he could speak with us
370		because he wasn't sure that we were police. Um, I think that's kind of - that -
		that came up several times during the entire conversation.
371		that came up several times during the entire convention.
372	V.	Now during this period of time while you were observing um, Mr. (Moore)
373	Q:	did you notice if he was under the influence of any type of drug o- drug or
374		
375		alcohol?
376		The state of the s
377	A:	Um, he appeared to be under the influence of some sort of narcotics. His
378		pupils appeared to be dilated. Um, he was very, very fidgety um, constantly
379		pulling his clothes, scratching at his body um, could not sit still, hands were
380		constantly moving in motion. Uh, he had hard time standing still as well.
381		
382	Q:	Okay. I forgot to ask but w- how was he dressed?
383		
384	A:	Uh, he was wearing a blouse of some sort that was uh, like a half shirt so his
385	×	belly was exposed. Um, I think it was more of a - I don't even know what
386		they're called um, but it was tight above the chest, went under the armpits.
387		Can you help me with that? Do you know what those are called? Halter top?
388		
389	Q2:	Tube top?
390	10	
391	A:	Tube top - kind of a tube top with the bottom being high so the belly was
392	11.	exposed and a skirt. I believe it was flower print um, that was probably knee
393	::	high.
394		
395	Q:	Okay. Do you remember what color this flower print skirt was?
396	٧٠	Oray. Bo you remain the same of the same o
397	A:	Multi-colored.
398	_ A.	Mari Coloica.
	0.	Bright colors or earthly tones?
399	Q:	Bright colors of cartify tolles.
400	Α.	I don't recall
401	A:	I don't recall.
402		Okay. Um, now uh, did m- did Officer uh, (Brown) give any direct orders to
403	Q:	Okay. Olli, flow uli, ulu ili- ulu Ollicci uli, (Diowil) give ally direct orders to
404		Mr. (Moore) at this point while you guys are still outside the apartment?
405		

406 407 408 409	A:	On - on multiple times s- um, Officer (Brown), trying to get (Moore)'s attention um, and trying to speak with him, he kept interrupting. So on - on several occasions she told him to stop talking and listen to what I'm saying. Um, and that was pretty much - that - that occurred multiple times as well.
410 411 412 413 414	Q:	Okay. And you said at one point you used a - your police radio to conduct a uh, records check and warrant check on - if I'm correct Mr. (Moore) and Mr. (Hayes). Is that correct?
415 416	A:	That is correct.
417 418	Q:	Okay. Who prompted you to do that?
419 420 421 422 423	A:	Um, nobody. I was - as a cover officer it's kind of typical of what I do. Um, the handling officer engages in conversation, tries to figure out what's going on, and while that process is happening usually th- as a cover officer I will get the information if they've got it written down, step to the side a little bit, and uh, do a records check. It tends to move the process along a little quicker.
424 425 426 427	Q:	Okay. So you used a radio and you did a records check. What did you find out about Mr. (Hayes)?
427 428 429 430 431 432	A:	I found out Mr. (Hayes) had a \$5000 warrant out of the City of San Francisco for - I believe it was for 594 um, and a couple - I - I think at least one, maybe two, smaller warrants out of San Francisco as well. I think they were municipal codes 'cause it wasn't something that I recognized.
432 433 434	Q:	Okay. What did you find out about Mr. (Moore)?
435 436	A:	Um, I found out that there were caution codes associated with Mr. (Moore) for PC245, assault with a deadly weapon. And that was it.
437 438 439 440	Q:	Um, having learned that uh, bo- uh, there was a caution code on Mr. (Moore) and there was a warrant attached to Mr. (Hayes) um, what - what happened thereafter - after you learned this information?
441 442 443 444 445 446 447 448	A:	Um, I - I told Officer (Moore) - or I mean sorry - Officer (Brown) out loud um, using police code that um, (Hayes) had a 5K out of San Fransciso for 45-or 594 is what I told her um, and that I told Telecom that we were gonna stand by for confirmation 'cause I didn't know what - if she wanted to arrest him or not at that point. Um, and then I didn't say anything about (Moore) verbally um, but on the field investigation card I - I handwrote below the name um, uh, caution code 245 and handed it to Officer (Brown).
449 450	Q:	And - and you made sure that she read that part - portion of

451	۸.	I pointed at it when I handed it to her.
452 453	A:	I pointed at it when I handed it to her.
454	Q:	Right.
455	ζ.	
456	A:	And it appeared that her eyes went to it.
457		
458	Q:	Okay. Did Mr. (Moore) have a warrant of any sort?
459		I did not not conthing healt from Talogom saying that he had a warrant
460	A:	I did not get anything back from Telecom saying that he had a warrant.
461	Ο.	Mm-hm.
462 463	Q:	ivini-mii.
464	A:	Um, prior to me arriving on scene um, something that I commonly do, if
465	11.	there's a um, if there is a person who is involved in the incident or the call that
466		comes in and I have a name I will run that name to see who it is that I'm
467		gonna be dealing with potentially. Um, and I did do that with (Moore) on my
468		way there. And a 10K warrant out of San Francisco came up but I didn't have
469		a birth date. So I did not know for certain if that was them or not but when I
470		ran his name through Telecom they didn't come back with any warrant.
47 1		241
472	Q:	With the exception of the cau- with - with
473		
474	A:	With (Hayes).
475	0.	Yeah, with - with (Moore) - with the exception of
476 477	Q:	Tean, with with (Moore) with the energy was
478	A:	Of the caution code.
479	1	12
480	Q:	the caution code.
481		
482	A:	Correct.
483		1 M. (Magra) had a \$10,000 years of based
484	Q:	All right, but you - you suspected Mr. (Moore) had a \$10,000 warrant based on your research but without the - without the birth date? Did you believe it
485		was him at the time?
486		was nim at the time?
487 488	A:	I wasn't sure.
489	A_{\cdot}	1 Wash Cade.
490	Q:	Okay. All right. So um, at what point was Mr. uh, who decided to take Mr.
491	ν.	(Hayes) on the warrant - Mr. (Hayes)?
492		
493	A:	Um, Officer (Brown) 'cause I told - when I told her that we were - I was
494		standing by to confirm the war- warrant she said, "We might as well take

		ta mail and the state of the st
495		him." So I confirmed the - the warrant with Telecom. Um, and then at some
496		point she asked me to go ahead and take him.
497		
498	Q:	Okay. And so you - were you the one who handcuffed Mr. (Hayes)?
499		
500	A:	Correct.
501		
502	Q:	Okay. All right. Um, did you at all tell Officer (Ken) Tu, T-U, or Officer
503		(Brown) that Mr. uh, (Moore) had a warrant?
504		
505	A:	When we arrived on scene um, I did say something about, "I ran the name and
506		a k- there was a 10K warrant out of San Francisco." Officer (Brown) said,
507		"Oh, well Mr. (Moore) came from San Francisco. He used to live in San
508		Francisco so it's probably him." I asked um, if she knew what age (Moore)
509		was. She said that she thought he was around 42 years old. I went back to the
510		car, looked, and that warrant - there were - there were a couple different
511		warrants that popped up with that name. But the one that I was really looking
512		at that 10K the birth date on it was I believe it was 1952. So I came back and
513		said I don't think that's the guy, um, 'cause the - the age and date of birth
514		didn't match up.
515		•
516	Q:	Got it. So when Officer (Brown) asked uh, said that Mr. (Hayes) would be
517	ν.	going for his warrant, you handcuff Mr. (Hayes), and after you handcuff Mr.
518		(Hayes) what happened from then that - that point?
519		(120) 00)
520	A:	Actually I, I actually walked Mr. (Hayes) downstairs
521	11.	1100mm, 2, 2 0000mm, ()
522	Q:	Okay.
523	Q.	Olaj.
524	A:	and outside and then handcuffed him out in front of the building.
525	Δ.	did odda did did did did did did did did did
526	Q:	Okay.
527	Q.	Okaj.
528	A:	Um, and then once he was handcuffed I took him over to my car, pulled out a
529	Α,	paper bag 'cause I was gonna search him, empty his pockets to take him to
		jail. Um, while I'm searching him is when I heard over the police radio
530 531		Officer (Brown) um, I'm - I'm not sure if she said code three cover, but she, I
531		think she said something more similar to uh, can we get, can we get some
532		more officers up here, something similar to that. And it sounded like there was
533 534		a scuffle going on. So at that point I
534		a southe going on, so at that powers.
-535 -536	O	Quick, real quick when - when you took Mr. uh, (Hayes) downstairs, walked
536	Q:	him downstairs, down the elevator and back out to your car where you
537		handcuffed him and searched him when - when you left where was Officer
538		(Brown) and Officer Tu at that time?
539		(Brown) and Officer 1d at that time:

540	A 00	They were still speaking with (Moore)
541	A:	They were still speaking with (Moore).
542	0	On the landing
543	Q:	On the landing.
544		
545	A :	Correct.
546		G + '4 1 G mode it down and you heard a radio traffic up that up
547	Q:	Got it, okay. So you made it down and you heard a radio traffic uh, that uh,
548		prompted you uh, to believe that uh, did you believe that Officer (Brown) and
549		Officer needed immediate assistance?
550		41 - 1 - 1
551	A:	Absolutely.
552		or or the Villa 1 May (Harren)?
553	Q:	Okay. So what did you do with Mr. (Hayes)?
554		The house of the healt of my our Time ho
555	A:	Um, I told Mr. (Hayes) you need to get in the back of my car. Um, he
556		cooperated. I put him in the back seat of my car, locked the doors, ran towards
557		the front door of the apartment complex, it was locked. Uh, so I went back to
558		Mr. (Hayes)'s property, actually to Mr. (Hayes) 'cause he had his keys still
559		around his neck, I took the keys off of his neck, asked him which key opened
560		the door, he told me, I opened the front door, I went upstairs and went to the
561		apartment.
562		
563	Q:	Okay and when you left Mr. (Hayes) in the back of your car, that means you
564		have a patrol vehicle with a restraint compartment in the back of your patrol
565		vehicle correct?
566		
567	A:	It is a caged unit yes.
568		
569	Q:	Caged unit, and - and you locked the doors before leaving Mr. (Moore) and
570		going back upstairs.
571		2
572	A:	Yes I did.
573		, od 1 1 1
574	Q:	Um, so you went back upstairs, you come out of the elevator, and you go back
575		to the apartment. When you get to the landing and you look, was the door still
576		open, the apartment door?
577		
578	A:	Yes.
579		
580	Q:	Where was Officer uh, Tu and Officer (Brown)?
581		
582	A:	They were inside, I couldn't see, when I exited the elevator I could not see
583		them.
584		

585 586	Q:		Okay.
587 588 589	A:	22	Though I saw the door was still open, there were a couple neighbors who were looking out and as I ran they just kind of pointed.
590	Q:		Okay.
591 592	A:		And so I went into the apartment.
593 594 595	Q:		Okay so when you went into the apartment and what was the first thing you observed when you uh, looked inside the apartment?
596 597 598 599	A:		Uh, I saw Officer Tu um, looked like he was behind uh, (Moore) who was on his belly on a mattress. Um, and Officer (Brown) was on the left side of (Moore) trying to grab uh, an arm.
600 601	Q:		Okay. So you saw Officer (Brown) grabbing for the left arm.
602 603 604	A:		Correct.
505 606 607	Q:		And when you saw Mr., Officer Tu behind Mr. (Moore) can you describe a little bit more in detail uh - uh, what he was, what Mr., what Officer Tu was grabbing in terms of Mr. (Moore)'s body.
608 609 610 611 612 613	A:		He had uh, he was - he was mostly laying on uh, (Moore)'s legs um, and kept getting bucked up in the air. Um, and he had (Moore)'s right arm back behind his back, um, and at that time I didn't realize it but he had, actually had a handcuff on that hand.
614 615	Q:		On the right hand.
616 617	A:		Correct.
618 619 620 621	Q:		When you said that Officer Tu was getting bucked by Mr. (Moore) does that mean Officer Tu was on top of Mr. (Moore) at that time, but more towards the lower half of his body you were saying?
622	A:		Yes.
623 624 625 626 527	Q:		Okay. When you say uh, and so he was trying to restrain Mr. (Moore) he had a cuff on his right arm, and but he was essentially uh, wo- would you say that Officer Tu was using his weight to control Mr. (Moore) at that point?
628	A:		Um, yeah somewhat.
629			261

Okay, all right. Um, and was Mr. (Moore)'s body completely on the mattress 630 Q: or just half his body? 631 632 He was, I think he was kind of at an angle so his feet were probably more on 633 A: the floor area. 634 635 Okay, all right. Um, was there anybody else in the apartment? 636 Q: 637 Not that I was aware of. 638 A: 639 Okay. And still at this point of the incident it was just you, Officer (Brown), 640 Q: and - and Officer Tu... 641 642 643 A: Correct. 644 ...with Mr. (Moore) okay. Um, how - how tall and heavy would you describe 645 Q: Mr. (Moore) to be? 646 647 Um, roughly 5'10" I would say real close to 370, 370 pounds, uh, maybe 648 **A**: pushing 400. 649 550 Okay. Um, so when you went in and you saw the struggle what did you do 651 Q: immediately when you, upon entering? 652 653 Um, I immediately went to the left side of (Moore) tried to figure out what -654 A: what to grab. Um, and Office Tu said, "Get his left arm." And his left arm was 655 under his body, um, and it wouldn't come out. I was trying to pull on it a little 656 bit and it would not come out from under his body. So I told Officer Tu let's 657 roll him to the left um, to get the body, his body weight off of that arm. 'Cause 658 we had control of the right arm, I was gonna try to roll to the left to get the 659 body weight off of his arm that was under his body. So I grabbed uh, around 660 the bicep um, or elbow area of the right arm that Officer Tu had and pulled, 661 rolling (Moore) to his left side. As - as I did that (Moore)'s left arm came out 662 from under his body, and up above towards his head. And Officer (Brown) 663 grabbed his wrist. At that point I rolled him back to his belly, um, and there 664 was limited space with Officer (Brown) and myself on the left side 'cause 665 there was a wall right there, so I could not reach up and grab the arm. Officer 666 (Brown) was struggling trying to get the arm back behind the back uh, back 667 behind (Moore)'s back. And so I grabbed his, I believe I grabbed his fingers 668 um, and told Officer (Brown), "Move out of my way." And I think I told her 669 twice, and finally she backed way and then I was able to gain control of the 670 arm and pull it behind the back. 671 572 Okay. So after you pulled the arm behind the back uh, um, were you then at 673 Q: that point able to handcuff Mr. (Moore) or it took some more struggles? 674

675		1 (OCC (D) 11 (W) 2 years and two handouffe "And
676	A:	At that point Officer (Brown) said, "We're gonna need two handcuffs." And
677		asked me if I had mine, I told her mine were on my prisoner in my car. Um,
678		and I'm not sure if Officer Tu pulled out a - a set or where another set came
679		from, but another set appeared, um, they clasped one set with the set that was
680		already on his right wrist, and then we attached 'em to the left wrist.
681		
682	Q:	Okay. So the handcuffing was completed and successful by the three of you?
683		Or at that point had other officers arrived?
684		
685	A:	At that point I believe it was just us three.
686	2 1.	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1
687	Q:	Were able to handcuff him.
688	Q.	Wolfe hole to halldour min.
	۸.	Yes.
689	A:	1 C5.
690	0	Okay at that point. Now at that point had officers started, other officers had
691	Q:	started to arrive?
692		started to arrive?
693		xx 1 CC
694	A:	Yes other officers were - were coming in while we were finalizing the
595		handcuffing.
696		
697	Q:	I got it.
698		
699	A:	Um, and then I turned around and saw a few officers standing directly behind
700		us. Um, the person was in custody uh, or handcuffed, detained, and I kept
701		seeing more officers, like I think I saw a Sergeant come in, um, and at that
702		point I said, "I have got to go back downstairs, I have a prisoner in my car
703		handcuffed." So I wanted to go back down and make sure that they were okay.
704		
705	Q:	Okay. Mr. (Moore) is successfully handcuffed, other officers have arrived,
706		and uh, is he still fighting at this point?
707		
708	A:	Yes he's kicking, screaming, cussing, um, just very, very animated, very
709	11.	angry, bucking, trying to pull his arms back, all kinds of stuff.
710		
711	Q:	Well during the time when you, Officer Tu and Officer (Brown) were
712	Q.	struggling with Off- with Mr. uh, (Moore) was he yelling something? Yelling
		anything to you? Saying anything?
713		anyming to you. Saying any ming.
714	A :=	Yeah he just kept yelling uh, I believe I heard fuck you, um, stop, I'm not
715	A:	gonna go, um, just a lots of, lots of rambling. Um, and we kept telling him to
716		stop resisting. Uh, just give us your arm, just give us your arm. And he kept
717		
718		saying no I'm not going to.
719		

720 721 722 723	Q:	Okay. Uh, so he's successfully handcuffed, he's still struggling, uh, what, uh, when you were leaving okay to go down to Mr. (Hayes) that's still in the back of your police car
724	A:	Yes.
725 726 727 728 729	Q:	when you were leaving what's the last thing you see Mr. (Hayes) and the officer, what's the last picture you see of what was going on inside when, as you left the apartment?
730 731 732	A;	Last picture I saw was um, Officer, Officer Tu um, moved off of (Moore), off to the right side, and was just holding the arm. Officer (Brown) I believe had completely let go of (Moore). Um, and there were two or three officers, and as
733 734		I was walking out I believe I saw Sergeant (Phillips) coming in with a wrap, saying, "I have a wrap."
735 736 737 738	Q:	At the time when you were leaving to go back to Mr. (Hayes) in addition to Officer (Brown) and Officer Tu, and you've mentioned Sergeant (Phillips) arrived, what other officers could you recall wh- came at that point and time?
739 740 741 742	A:	I believe Officer Mathis was there, um, Officer (Gardner), and I believe that uh, Sergeant Cardoza was also um, in there.
742 743 744 745	Q:	Okay. And when you left was Mr. (Moore) on, still on his stomach, on his front side uh, on uh, still partially on top of the mattress is that correct?
746 747	A:	Correct.
748 749	Q:	Okay. Uh, but nobody was on top of him at that point was, were they?
750 751	A:	That's - that's correct.
752 753	Q:	Okay, nobody was on top of him when - when you last saw him.
754 755	A:	When I last saw him that is correct.
756 757	Q:	Okay, got it. And uh, but he was still actively resisting as you said.
758	A:	Yes.
759 760 761 762	Q:	Okay so you went down and got in the elevator to your car, what - what happened when you got to your car?

763 764 765	A:	Um, I - I di-, went directly to my car, I pulled uh, Mr. (Hayes) out of the car, and uh, made sure that he was okay. And then continued on with my search of him to empty his pockets to take him to jail for his warrants.
766 767 768 769	Q:	And so at, did, after you did, completed the search did you drive back towards the station?
770 771 772 773 774 775 776 777	A:	No I uh, after I completed the search I put him back in my patrol car, um, and then I waited um, in front of the address because I heard radio traffic where they were asking for um, for an ambulance. Uh, they were asked for BFD uh, with a gurney, and shortly thereafter I - I heard them say I wanna say they said uh, he stopped that the subject had stopped breathing, starting CPR. Um, and so at that point I figured I - I needed to stick around rather than just take (Hayes) to the jail.
778 779	Q:	Okay.
780 781	A:	So (Hayes) stayed in my car, and I stayed in front of the address.
782 783	Q:	Okay so but, okay got it. Uh, at what point did uh, at what point I understand you gave custody of Mr. (Hayes) to Officer (Kapland)?
784 785 786	A:	Correct.
787 788	Q:	Okay. How did that, why, and how did that transfer?
789 790 791	A:	After - after a little while BFD came down with uh, Mr. (Moore) on a gurney, uh, put him in the ambulance and drove away.
792 793	Q:	Mm-hm.
794 795 796 797 798	A:	Um, and at that point I went over to Sergeant Ross who was standing in - in front of the address and said, "Due to the situation is it, is there a possibility I can get one of the other Officers down here who's not involved um, to transport (Hayes) and book him into the jail?" And that's when Officer (Kapland) said that he would do it.
799 800	Q:	Officer (Kapland) was outside with
801 802 803	A:	Correct.
804 305	Q:	Officer Ross at the time.
806 807	A:	Yes.

808 809	Q:	Do you remember if Officer (Kapland) or Ross went upstairs at any point?
810	A:	I do not recall that.
811	A.	1 do not room man
812	0:	Okay. So you transferred custody of Mr. (Hayes) to Officer (Kapland) at this
813	Q:	point.
814		pont.
815	A:	Correct.
816	A.	Concor.
817	Q:	Okay. After you give transfer of custody of Officer, of (Hayes) to Officer
818	Q.	(Kapland) what did you do thereafter?
819		(Explains) What are you as increases.
820	A:	Uh, I just stayed in front waiting for um, any new orders or - or uh, the - the
821	A.	next step of what I was supposed to do.
822		next step of what I was supposed to do.
823	0:	Got it. Uh
823 824	Q:	Out it. Oil
825	A:	To aid in whatever.
826	Λ.	W To did in Whatever.
827	Q:	And did you at all, were you tasked with anything after, while you were still
828	Q.	out front?
829		out front.
830	A:	While I was out front Sergeant (Phillips) um, called me on my cell phone and
831	11.	asked me to, if I still had (Hayes) with me, I told her no that (Kapland),
832		Officer (Kapland) had taken him to the jail to book him. And she asked me to
833		go to the jail, um, and get a statement from (Hayes) to find out um, what had
834		transpired what - what happened previously in the night to us coming out, um
835		and any kind of medical issues that (Moore) may have had.
836		
837	Q:	So at that point you left to go to the station to interview (Hayes)?
838	ζ.	
839	A:	That is correct.
840		
841	Q:	Okay. You never went back upstairs to the apartment.
842		
843	A:	I did not.
844		
845	Q:	Okay. When you heard the res- uh, struggle that Officer Tu and Officer
846		(Brown) were engaging in with (Moore) and you ran back upstairs to assist
847		them, did you know why at that point, why they were trying to physically
848		restrain Mr. (Moore)?
849		
850	A:	I did not.
851		
852	Q:	Okay. You just went there to assist. 266

853		
854	A:	I just went there to assist.
855 856	0:	Okay.
856 857	Q:	Oray.
858	A:	I - I, as I was going up I thought that Mr. (Moore) may have attacked them.
859	Λ.	That's how agitated he was during the interaction.
860		That I now agraced he was during the moreone
861	Q:	Got it. Now during the time when you were, and you yourself were assisting
862	ζ.	in the struggle with Mr. (Moore) with Officer Tu and Officer (Brown) uh,
863		before I ask that question; what is your height and weight?
864		
865	A:	I'm 5'10'', 235 pounds.
866		
867	Q:	Do you consider yourself uh, a strong person?
868		
869	A:	I do.
870		
871	Q:	Okay. Now considering you were with Officer Tu is also a large Officer build
872		wise, and yourself, were you guys having a very, a difficult time with Mr.
873		(Moore)?
874		
875	A:	Yes.
876		Ol Dil C Lil (M. (Manus) all at contain mainta yang oyomnoyyaring
877	Q:	Okay. Did you feel that Mr. (Moore) uh, at certain points was overpowering
878		you - you guys?
879	A .	At contain mainta Mag
880	A:	At certain points yes.
881	0.	Yes. Um, and so you, did you felt that uh - uh, Mr. (Moore) in anyway uh,
882 883	Q:	scratch that. So while you, Officer Tu and uh, Officer (Brown) were
884		struggling with Mr. (Moore) did you, yourself and or Officer Tu or Officer
885		(Brown) the three of you, did you witness any use of uh, hand strikes, open
886		palm strikes or fist strikes by Officers on to Mr. (Moore)?
887		P
888	A:	No.
889	- 150	
890	Q:	Did you witness or did you yourself use any type of baton strikes?
891		
892	A:	No.
893		
894	Q:	Did any other officer or you uh, deploy your OC and use it?
895.		
896	A:	No.
897		267

898 899 900	Q:	Did you or any other officer uh, use any other type of objects on your duty belt, or any objects in the apartment to strike Mr. (Moore) with?
901 902	A:	No.
903 904	Q:	Did you or any other officers physically kick Mr. (Moore) in any fashion?
905 906	A:	No.
907 908	Q:	Uh, did you or any officer discharge your firearm?
909 910	A:	No.
911 912 913	Q:	Did you or any other officers use your firearm as a blunt object to strike Mr. (Moore)?
914 915	A:	No.
916 917	Q:	Uh, let me see, I'll take a pause, you got any questions?
918 919 920 921 922	Q1:	Yeah um, did, what point did, and you may have answered this already, did Mr. (Moore) express any need for medical attention? Like did he say you know I - I, having any kind of medical emergency? Mr. (Moore) did he say anything to that affect?
923 924	A:	Not that I recall at all.
925 926 927 928 929	Q1:	Okay. Um, did you, uh, just a little bit more clarification and you've already talked about this; when you saw uh, Officer Tu on the right side is what you said of Mr. (Moore) you said he appeared to be holding down his legs to a certain extent is that right?
930 931 932	A:	He was, when I first walked in when they were struggling, when I first came up the st- the - the elevator, when I first came in Officer Tu was, it looked like he was straddling his legs, trying to keep body weight on the legs
933 934 935	Q1:	Right.
936 937	A:	and the buttocks area.
938 939	Q1:	Right.
940 941	A:	Um, with, so he was not to the side, but he was on his legs, buttocks area.

942 943 944 945	Q1;	Okay - okay. Did you see at any time, or any time after that he appear to place any weight on Mr. uh, (Moore)'s upper body while he was prong in that position?
946 947	A:	No.
948 949 950	Q1:	Okay. Did he uh, did it appear at that time that um, Mr. (Moore) was able to breathe? Was he making any verbal, was he speaking or yelling?
951 952	A:	Yeah he was yelling at us.
953 954	Q1:	Okay.
955 956	A:	So I assumed he was breathing.
957 958 959	Q1:	Was at any point during this did you see anyone put any weight on Mr. uh, (Moore)'s head or neck area?
960 961	A:	No.
962 963	Q1:	Okay, uh, and I think that's what I have for now.
964 965 966 967	Q2:	Um, as he was screaming, as he was yelling uh, he mentioned you didn't recall him saying he needed any medical attention. Could you recall him ever saying that he couldn't breathe?
968 969	A:	No.
970 971	Q2:	Okay.
972 973 974	Q:	As me, tell me if I ever asked you this; have you ever had any prior contacts with Mr. (Xavier Moore)?
975 976	A:	Not to my knowledge.
977 978	Q:	Do you have any prior knowledge of Mr. (Xavier)?
979 980	A:	No.
981 982	Q:	That's all I have. Is there anything you'd like to add Officer Smith?
983 984	A:	Nope.
985 986	Q:	It is currently 2128 hours end of interview with Officer (Brandon) Smith.

INTERVIEW WITH OFC. (BRANDON) SMITH Interviewer: Sgt. Hong 02-13-13/8:45 pm • Case # 2013-08510 Page 23

987	9
988	This transcript has been reviewed with the audio recording submitted and it is an accurate
989	transcription.
990	Signed

BERKELEY POLICE DEPARTMENT

- 1	
2	
3	
4	CASE NO
5	(Fall)
6	DATE
7	
8	
9	STATEMENT TO INVOLVED OFFICER:
10	
11	Officer NIKOS KASTWICES, you are being represented here at this interview by
12	your attorney, HARRY STERN. You are not in custody and you are free to
13	conclude the interview at any time. You are not obligated to answer any questions.
14	Conclude the litterview at any time. Total are not one-good
15	Any answers you do give may be used in a court of law. Having this in mind, do you
16	
17	wish to voluntarily proceed with the interview?
18	t a
19	
20	OFFICER NAME SIGNATURE
21	
22	ATTORNEY NAME SIGNATURE
23	2 1/2
24	INVESTIGATOR NAME SIGNATURE
.	

1 -		
1=		
2		
3		
4		
5		
6		
7		INTERVIEW WITH KASTMILER
		Q=Sgt. Hong
8		
9		Q1=Detective Johnson
10		Q2=Harry Stern
11		A=Ofc. (Nikos) Kastmiler
		· ,
12		
13		
14	Q:	February 13, 2139 hours. Interview with Officer (Nikos) Kastmiler. I am
15		Sergeant Hong. H-O-N-G.
		201B4m1 110m2 0 m - 0 m
16		
17	Q1:	Detective Johnson. J-O-H-N-S-O-N. Badge 26.
18		
19	02:	I'm Harry Stern. S-T-E-R-N.
	Q2:	I in that y Storm. S T 2 Text.
20		TO A CONTRACT OF THE PROPERTY
21	A:	And I'm Officer (Nikos) Kastmiler. That's K-A-S-T-M-I-L-E-R. Badge
22		#104.
23		TI 1 I'll date manufacture Vostmiler?
24	Q:	Thank you. Uh, state your rank Officer Kastmiler?
25		
26	A:	I'm a Police Officer with Berkley Police.
	41.	,
27	_	YVII
28	Q:	What was the date of your hire with Berkley Police?
29		
30	A:	Well, I – it was uh, sometime in December of 2007. I don't remember the
	Π.	date exactly.
31		date exactly.
32		
33	Q:	Do you have any prior law enforcement o- experience pri- uh - uh, prior to
34		BPD?
35		
36	A:	Uh, no.
37		
38	0.	Which patrol operations team do you work?
	Q:	Willow part of the second seco
39		
40	A:	Uh, Team 4.
41		
	0.	Okay. What are the normal days work and normal hours work for Team 4?
42	Q:	Okuj. Wilde alo alo noma dajo wona mana mana mana mana mana mana mana m
43		
44	A:	The uh, normal days are Monday through Thursday. The hours are 8:30 p.m.
45		to 6:30 a.m.

46		
40 47	Q:	Okay. When I say yesterday, that means, uh, February 12th, Tuesday okay?
48		
49	A:	Okay.
50		
51	Q:	Currently, it is February 13th, uh, Wednesday, okay?
52		
53	A:	Okay.
54	0.	So what was your call sign during yesterday's shift?
55 56	Q:	50 What was your can sign during yesterday is since
57	A:	It was uh, 4Adam7.
58	123	
59	Q:	And uh, what area or beat were you assigned to during yesterday's shift?
60		
61	A:	Yesterday's shift, I was beat 7 which is uh, South Campus area, Berkley.
62		
63	Q:	Who were your supervisors during yesterday's shift and during yesterday's
64		incident?
65	1.00	III. Congrount Dhilling and Huyunh
66	A:	Uh, Sergeant Phillips and Huynh.
67 68	0:	Okay. Phillips is P-H-I-L-L-I-P-S and Huynh is H-U-Y-N-H and I meant to
68 69	Q:	ask for clarification, who are your supervisors. Not supervisor's on scene but
70		supervisors and you're still Phillips and Huynh?
71		Supplies the supplies of the supplies to the s
72	A:	Yeah, my Team supervisors, yes.
73		*
74	Q:	And they are your normal supervisors?
75		
76	A:	Yes.
77	_	Uh, when was the last shift you worked prior to yesterday's shift?
78	Q:	Un, when was the last shift you worked prior to yesterday a shift.
79 80	A:	So yesterday being Tuesday night, the uh, shift that I worked prior to that was
81	A.	Monday night. 8:30 to 6:30 a.m.
82		Tribitally inglish one of the same
83	Q:	6:30 a.m. Tuesday morning?
84		
85	A:	Yes.
86		
87	Q:	Got it. All right.
88		Total at the
89	A:	Last night.
90		

91	Q:	Do you hold any other secondary jobs?
92	A:	No.
93 94	Α.	140.
95	Q:	Did you work any overtime prior to yesterday's shift?
96		
97	A:	No.
98		The state of the service of the serv
99	Q:	Have you any - have you taken any medication, prescription or otherwise?
100	A	Any progeniation medications?
101	A:	Any prescription medications?
102 103		
103	Q:	Okay.
105	ζ.	
106	A:	But that's the only one.
107		
108	Q:	Uh, have you consumed any alcohol in the past 24 hours?
109		
110	A:	No.
111		All the December 1 and the man of
112	Q:	All right. Do you have any medical conditions?
113	۸.	No.
114 115	A:	NO.
116	Q:	Before yesterday's shift, when was the last time you slept and how long?
117	۷.	Delicitory described in the second of the se
118	A:	Before yesterday's shift, uh, I slept from about 7:30 in the morning to about -
119		about 3:30 in the afternoon. That – so that would be Tuesday during the day.
120		
121	Q:	During the day Tuesday?
122		
123	A:	Yeah.
124	0.	And you reported to work Tuesday at 8:30 in the evening?
125 126	Q:	And you reported to work I desday at 0.50 in the evening.
120	A:	Correct.
128	11.	
129	Q:	Okay. Did you sustain any injuries during yesterday's incident?
130		
131	A:	No.
132		
133	Q:	Do you wear corrective eye glasses or contact lenses?
134		V
135	A:	Yes.

136	_	Decree which are do you wear during shift?
137	Q:	Do you wear – which one do you wear during shift?
138		III. I was allowed who contact language
139	A:	Uh, I normally wear uh, contact lenses.
140		G + 11 and von view contact language vesterday?
141	Q:	Contact lenses. Uh, and you wore contact lenses yesterday?
142		X7.
143	A:	Yes.
144	_	The state of the same half broken coing clockwise could you describe what
145	Q:	Uh, starting from your belt buckle, going clockwise, could you describe what
146		it is – what duty gear is on your duty belt?
147		of the late of the holy broken it and two magazines then
148	A:	Okay, going clockwise. Uh, from the belt buckle, it's uh, two magazines, then
149		uh, next thing um, Smith & Wesson .40 caliber department issued and then
150		next on that is a set of handcuffs. Next from that is another set of handcuffs
151		followed by a belt flash light. A radio from the department. A collapsible
152		baton. OC Peppers spray and uh, key pouch.
153		1 Compared and a second and
154	Q:	Did your duty belt or duty gear sustain any damage from yesterday's incident?
155		
156	A:	No.
157		
158	Q:	What vehicle make and model were you driving? What's the vehicle number?
159		
160	A:	It's a Ford Crown Victoria, uh, vehicle 1735.
161		
162	Q:	Uh, what kind of markings and emergency equipment is on this vehicle?
163		
164	A:	It's uh, marked black and white. Also overhead police uh, lights marked with
165		Berkley Police Department on it.
166		
167	Q:	Do you normally drive this particular vehicle?
168		
169	A:	Yes.
170		
171	Q:	Uh, were you a single officer or a paired officer car?
172		
173	A:	Single officer.
174		
175	Q:	All right. Now you prepared a supplemental police report. Uh – uh, for this
176		incident, correct?
177		
178	A:	Yes.
179		w w
180	Q:	Okay and uh, it's in front of you. Could you uh, read it for us verbatim?
100	Κ.	· ·

181		
182 183 184 185	A:	Sure. On 02/13/13 at approximately 0030 hours, I heard Officer Brown say over the radio to "Send emergency cover." I responded to 2116 (Alston) Way, #514 to assist. I arrived on scene and entered the apartment. I observed a very large male, later identified as (Moore) laying face down on top of a
186 187 188 189		mattress with officers struggling to control him. Officer Two, Badge #38, Officer Brown, Badge #16 and Officer B. Smith, number three, were controlling (Moore)'s arms and legs as he struggled to break free from their control. (Moore) was handcuffed and I assisted in controlling (Moore)'s arms and preventing him from getting up. I remained with (Moore) – sorry, excuse
190 191 192 193		me – while waiting for BPD officer to bring a wrap device for (Moore). While we were deploying the wrap, (Moore) stopped struggling. We rolled (Moore) on to his left side. About a minute later, Officer (Brown) stated that, (Moore) had stopped breathing. We checked for a pulse and noticed that he no longer
194 195 196 197		had a pulse. When we discovered this, we immediately removed (Moore)'s handcuffs and laid him flat on his back. We began doing CPR on (Moore) until BFD arrived on scene, began emergency treatment. I remained on scene and contacted (Sterling). (Sterling) was inside the apartment with BPD
198 199 200		officers and (Moore) during the initial incident. (Sterling) provided a written statement about the incident. See attached written statement.
201 202 203	Q:	Okay, thanks. Okay. So you were on routine patrol when you heard a radio traffic, correct?
204 205	A:	Yes.
206 207 208 209	Q:	And you said, uh, according to the police report, that the radio traffic said something to the effect of send emergency cover and that was made by Officer Brown?
210 211	A:	Yes.
212 213	Q:	Okay. Where were you – where were you when you heard this radio traffic?
214 215 216	A:	I don't remember where exactly I was. I was somewhere on Beat 7 area. Um, somewhere on my normal beat. I don't remember exactly though.
217 218	Q:	Okay. And you responded uh, in what fashion? Which code?
219 220	A:	Code 3.
221 222	Q:	Okay. And when you arrived uh – uh, how did you enter the building?

223	A:	The uh, building was already propped open by a door. Um, I basically arrived
224		on scene the same time as Officer (Mathis) and (Gardner) and uh, the three of
225		us, took the elevator together.
226		
227	Q:	Okay. So you ascended – you went up the – with the elevator, you got to the
228		fifth floor in front of apartment 514, correct?
229		•
230	A:	Yes.
231	2 8(4))	2.434
232	Q:	Okay. When you arrived, uh, at apartment 514, um, was the door closed or
233	Q.	open?
		open:
234	A UGO	Onen
235	A:	Open.
236		Okay. Um, when you yourself entered apartment 514, what was the first thing
237	Q:	
238		you observed?
239		The second of th
240	A:	Uh, we observed a very large male uh, laying on what looked like a mattress
241		uh, in the corner of the apartment. Uh, he was laying on his stomach and uh,
242		there was three officers in there. Officer (Brown), (Two) and Officer (Smith).
243		Um, it was apparent that they were struggling to control him and that he was
244		kicking and flailing around.
245		
246	Q:	What did you do upon seeing that?
247		
248	A:	When I saw that, I rushed over there to assist and controlling his arms. Um, I
249		 I held his arms while he was trying to bring them up and also trying to get
250		back up.
251		
252	Q:	Okay. So when you said you tried to control his arms, were you grab - were
253	4.0	you trying to control both arms or - or did you have a particular arm you were
254		trying to control?
255		12) 22-5 10 10 10 10 10 10 10 10 10 10 10 10 10
256	A:	I was trying to grab both arms. I noticed that he was already in handcuffs, but
257	11.	again, he was trying to bring his arms up and he also tried to grab my wrists
258		while he was holding there, but I was trying to hold both of his arms to keep
		them in that position.
259		them in that position.
260	0	So when you arrived and you went in to assist, he was already handcuffed,
261	Q:	-
262		correct?
263		¥7
264	A:	Yes.
265		THE STATE OF THE S
266	Q:	Uh was it one set, two sets, three sets? Do you recall how many sets were
267		linking his arms together?

268		
269	A:	I don't remember how many cuffs were used.
270		
271	Q:	Okay. But even though he was handcuffed, you described him still actively
272		resisting, is that correct?
273		
274	A:	Yes.
275	11.	1409
276	Q:	Okay, like when you were saying that he tried to get - was he trying to - what
277	Q.	- describe a little bit more in detail what he was doing as he was resisting
278		even though he was in handcuffs.
		even mough he was in handours.
279	A .	He um, I remember his legs were flailing around and he was trying to kick uh,
280	A:	officers off of his legs. He was trying to basically stand back up it seemed
281		
282		like.
283	_	of the state of th
284	Q:	Okay. And what kind of force were you using to keep uh, control of Mr. uh,
285		(Moore)?
286		
287	A:	I was holding his two um, arms and uh, I was also using my shin and knee on
288		the back of his left leg to keep them stationary on the – on the mattress.
289		
290	Q:	Okay. Do you recall uh, while you were trying to uh, maintain control of Mr.
291		(Moore), (Xavier Moore) that's this deceased person, when you're trying to
292		maintain control of Mr. (Moore) what was - can you recall what Officer
293		(Two) was doing?
294		N.
295	A:	I – I
296		
297	Q:	If you can recollect?
298	ζ.	•
299	A:	I remember he was there. Uh, I don't remember specifics on what he was
300	11.	doing. We were all trying to basically prevent him from getting up and
301		continuing the fight. I don't remember specifically what he was doing though.
302		Continuing the right. A data of the right
302	0.	Okay, do you remember his positioning? What Mr. (Moore)
	Q:	Okay, do you remember his positioning.
304	Α.	He was standing uh, opposite me and so if (Moore)'s laying on the ground, I
305	A:	was closest to his left side. Office (Two) was um, on his right side.
306		was closest to his left side. Office (1 wo) was air, on his right side.
307	0	Diale aida?
308	Q:	Right side?
309		V1.
310	· A:	Yeah.
311		I 1 discount of the matters of
312	Q:	Is he on the ground or on the mattress?
		A

010		
313		I'm sorry. While he's uh, stomach down on the uh, mattress.
314	A:	I in sorry. While he s un, stomach down on the un, mattress.
315	Ο.	Okay. Where was Officer (Brown)?
316	Q:	Okay. Where was officer (Brown):
317	Α.	Officer (Brown) was to the left of me, uh, closer towards the upper portion of
318	A:	·
319		his body.
320	0	What about Officer (Smith)?
321	Q:	what about Officer (Simur):
322		Officer (Smith) was to the right of me uh, also, again on the left side of his
323	A:	
324		body.
325	0	To the might aide or left aide?
326	Q:	To the right side or left side?
327		I C .: I - : - what I nomember
328	A:	Left side is what I remember.
329	_	I 0 11 0 Ohan All sight
330	Q:	Left side? Okay. All right.
331		The state of (Magra)?a hady
332	A:	To my right, but off to the left side of (Moore)'s body.
333		or and the II I I would officer which body port of Mr.
334	Q:	Okay. All right. Um, uh, do you recall what Officer – which body part of Mr.
335		(Moore) was he was grabbing onto?
336		
337	A:	No.
338		
339	Q:	Okay. Uh, I forgot to ask, what about um, Officer (Brown)?
340		
341	A:	No, I don't.
342		
343	Q:	Okay. Uh, do you recall any other officers arriving to it – well what was
344		Officer (Mathis) doing? Do you recall?
345		
346	A:	I believe he was trying to control (Moore)'s legs. Um
347		
348	Q:	Okay, what about Officer (Gardner)?
349		
350	A:	I believe he was also trying to do the same thing.
351		
352	Q:	Okay. All right. Um, at this point did any other officer arrive to assist in
353		addition - excluding the room. You guys are already there. Do you know
354		who else arrived at all?
355		
356	A:	I – I know uh, Sergeant (Phillips) and Sergeant (Cardoza) um, arrived shortly
357		after but any other officers, I'm – I'm not aware of.
201		•

358		
359	Q:	Okay. So after the handcuffs are placed and was there a – well – do – do you
360		know, was it successful, Officer (Mathis) in restraining um, his legs? Mr.
361		(Moore)'s legs?
362		(Moore) a raga.
	۸.	I – I could – I wasn't actively watching him so I don't know for sure. I do
363	A:	
364		remember his legs were flailing around.
365		
366	Q:	Okay.
367		→ 1
368	A:	But I – I – again, I wasn't looking directly at what Officer (Mathis) was doing,
369		so I don't know.
370		
371	Q:	Uh, during - during this portion while you were present and Mr. uh,
372	ζ.	(Moore)'s – would you say that even though he was handcuffed, he was
		actively still resisting?
373		actively still resisting:
374		T/
375	A:	Yes.
376		*
377	Q:	Was he yelling anything? Was he saying anything?
378		
379	A:	No.
380		
381	Q:	Nothing?
382	ζ.	2.4
383	A:	No.
	A.	110.
384	0	II
385	Q:	He wasn't yelling at any point? At that time, he was quiet when uh, but he
386		was physically resisting but at that time he wasn't yelling anything?
387		
388	A:	Correct.
389		
390	Q:	When you were there? Okay, got it. Um - um, let's see. Did you, at all hear
391		Mr. (Moore) uh, while you were there with him ver- verbalize and say, I could
392		- he - that he couldn't breathe or that he needed medical attention or that he
393		was hurt in any way?
394		THE TELL IT MAY
	A =	No
395	A:	No.
396	0	Ol NI - 1:1 tell ger and officer to ways recallection who witting
397	Q:	Okay. Now, did you at all see any officer, to your recollection, uh, putting
398		pressure on Mr. (Moore)'s head or neck?
399		
400	A:	No.
401		

402 403	Q:	What about putting pressure on his chest area, stomach area, diaphragm, etcetera?
404 405 406	A:	No.
407 408 409	Q:	So, now explain to me after – was there at any point, Mr. (Moore) calms down?
410 411 412 413	A:	There was a point when we basically uh, had the wrap and we were kind of unstrapping the wrap and I believe we initially put the leg restraints on him was kind of when he stopped uh, resisting, basically.
413 414 415	Q:	Stopped physically resisting?
415 416 417	A:	Yes.
417 418 419	Q:	Okay.
420 421	A:	But I believe at that point, he was already on his side.
422 423	Q:	Okay. He was already on his side.
424 425 426	A:	When we were trying to figure out how to deploy the wrap because he's a larger individual uh
427 428	Q:	Okay.
429 430	A:	while that was going on, yeah.
431 432 433	Q:	To your rec- best recollection, how do you describe uh, Mr. (Moore)'s height and weight?
434 435	A:	Uh, very large in stature. Heavy stature too.
436 437	Q:	Can you give an estimated poundage or no?
438 439	A:	Probably about 400 pounds.
440 441	Q:	Okay. About how tall you think?
442 443	A:	Uh, probably 6'2", 6'3".
444 445	Q:	6'2", 6'3"?
446	A:	That's what it seemed like, yeah.

447 448 449 450 451 452 453	Q:	Okay. Um, did uh, during the brief moment where uh, Mr. (Moore) was still struggling, did you hear any officers commanding – making any verbal commands to uh, to Mr. (Moore) in any way? Telling him – giving him orders to calm down? Giving him orders to stay still? What – whatever you can recollect.
454 455 456	A:	I do remember somebody saying to uh, calm down and stop resisting. I don't remember who exactly said that, but remember hearing that.
457 458	Q:	So he was placed on his side you said, correct?
459 460	A:	Yes.
461 462	Q:	Do you remember which side, left or right?
463 464	A:	Left side.
465 466	Q:	Left side. And at this point, he's calm. He's not resisting anymore?
467 468	A:	Correct.
469 470 471	Q:	Okay. To the point of – so he's now calm and you mentioned early on in your interview that he started having uh, difficulty breathing, is that correct?
472 473	A:	Yes.
474 475 476	Q:	Okay, well how long was that time span between the time he went calm to the time he started having difficulty breathing?
477 478	A:	I estimate it at maybe a minute or so.
479 480 481 482	Q:	Okay. And uh, did you yourself notice that he was having difficulty or did somebody – some officer say something that prompted you to uh, notice as well?
483 484 485 486	A:	No, well Officer (Brown) said uh, I – something uh, to the effect of, "I think he's not breathing." At that point, I wasn't aware and uh, I tried to confirm also.
487 488	Q:	You tried to what?
489 490	A:	Tried to confirm that he wasn't breathing.
491	Q:	Okay.

492		
493	A:	And tried to check to see if he was after I heard her say that.
494	0	
495	Q:	Okay and you when – you wanted to try to check to confirm, what were you
496		doing to confirm if he wasn't breathing or not?
497		TH T T
498	A:	Uh, I – I put my hand kind of on his – his stomach to – well, stomach, chest
499		area to see if I could feel breath coming out or his chest rising
500	0	Maria Lan
501	Q:	Mm-hm.
502		The I did to the second the secon
503	A:	and lowering. Um, I didn't feel anything.
504	0	A model in a class that years do 9
505	Q:	Anything else that you do?
506		I this if the about for his males. The I was on't really able to become be war atill
507	A:	I tried to check for his pulse. Um, I wasn't really able to because he was still
508		in handcuffs. I was trying to but I couldn't feel for any pulse and I wasn't
509		sure if that was because um, the handcuffs were interfering with it or just that
510		he didn't have a pulse.
511	0.	Okay. Um, so when uh, that occurred, what – what occurred next when –
512	Q:	
513		when you guys uh, realized he was not breathing?
514	A:	When we realized he wasn't breathing uh, and that he no longer had a pulse,
515	Α.	when we rearrised he wash t breathing this, and that he no longer had a pulse, we immediately took off his – his handcuffs and uh, rolled him onto the floor,
516 517		flat on his back.
517 518		Hat on his back.
519	0.	What part did you take in the un- in - in the removal of the handcuffs and
520	Q:	rolling him onto his back? Do you recall?
521		forming min onto his back. Do you recair.
522	A:	Uh, I believe I was holding onto one of his wrists making sure that um, if he
523	11.	was awake and – or if he did wake up, that he was not going to actively resist
524		again and continue fighting so I believe I was controlling one of his wrists
525		while we were taking the cuffs off.
526		William to the mind and again and
527	Q:	Okay. Do you recall which officer re-released the cuffs from the wrists?
528	⋖.	Chay, Do you want many control to the same and the same a
529	A:	I don't.
530		
531	Q:	And um, so he's on his back and you - and you uh, and the officers started
532	ζ.	CPR, is that correct?
533		
534	A:	Yes.
535		
536	Q:	And which officer had what role in the CPR, if you recollect?

537		
538	A:	Uh, I remember Officer (Two) was doing the chest compressions.
539		
540	Q:	Okay. And then do you recall uh, if any officer summoned the paramedics?
541		
542	A:	Yeah, I believe um, they were – they were summoned. I don't recall who was
543		the first person to call for BFD.
544		
545	Q:	Mm-hm.
546		
547	A:	But I do remember hearing over the radio, somebody requesting paramedics.
548		
549	Q:	Okay.
550		•
551	A:	I believe that was actually the initial point when he stopped uh, breathing.
552		When we noticed that he was no longer breathing and had no pulse.
553		
554	Q:	Okay.
555	ζ.	Δ
556	A:	So earlier.
557	11.	
558	Q:	And uh, eventually - while you were still inside the apartment when the uh,
559	٧.	paramedics arrived, correct?
560		puramous arrivou, correct.
561	A:	Yes.
562	л.	103.
563	Q:	Okay, what were you doing while uh, the others were doing uh, - well, certain
564	٧.	officers were doing CPR. What were – what were you doing at that time?
565		officers were doing of it. What were year year at any
566	A:	I was uh, controlling his right arm.
567	Α.	1 Was all, controlling in Figure arm.
568	Q:	Okay.
569	Q.	Okuy.
570	A:	And also his right leg just in case – because he was no longer handcuffed.
571	Λ.	raid also his right log just in outs seedad its was its resign same and
572	Q:	Yeah.
573	Q.	rean.
574	A:	Um, if he did wake up, I didn't want him to be able to swing his fist and hit
575	Λ.	Officer (Two), while Officer (Two) was uh, giving him chest compressions.
576		Officer (1 wo), while officer (1 wo) was any giving man of the
577	0.	Okay. And you kept doing that until the paramedics arrived?
	Q:	Oxay. This you kept doing that after the parameter arrived.
578 579	۸.	Correct.
	A:	Correct.
580		

581 582	Q:		Okay. When the paramedics arrived, did you release – or did you just uh, back off?
583			
584	A:		Yes.
585	<i>7</i> 1. •		103.
586	Q:		Okay. And uh, paramedics came, kept working on Mr. (Moore) and
587	Q.		eventually Mr. (Moore) was taken out of the apartment?
		45	eventually wir. (whoose) was taken out of the apartment:
588	Α.		Voc
589	A:		Yes.
590	0		Ol . O Mr. (Manus) talan and afthe anastment avail what did
591	Q:		Okay. Once Mr. (Moore) was taken out of the apartment, well what did –
592			what did you do thereafter, once Mr. (Moore) was now out of the apartment
593			and in en route to the hospital?
594			
595	A:		I uh, contacted um, Mr. (Sterling) outside the uh, apartment and obtained a
596			written statement from him.
597			
598	Q:		Before uh, taking the statement from Mr. Sterling, did you know who he was
599			and why you were taking a statement from him?
600			
501	A:		No, not initially. Uh, Officer (Cardoza) – I'm sorry, Sergeant (Cardoza), told
602			me that um, Mr. (Sterling) was a witness and inside the uh, building prior to
603			police arrival but I was not aware of that until I had spoken to him.
604			police dall value in the second of the secon
605	Q:		Okay. And then you – and then you took a uh, statement from Mr. (Sterling),
606	Q.		correct?
607			conject:
608	۸.		Yes.
	A:		1 C5.
609	0.1		Co year hand wrote the statement whe and whe Mr. (Starling) signed it as true
610	Q:		So you hand wrote the statement uh, and uh, Mr. (Sterling) signed it as true
611			and factual, correct?
612			47
613	A:		Yes.
614			
615	Q:		Okay. After you – the statement you took from Mr. (Ster)- where – where
616			was the statement taken – where that location was?
617			
618	A:		Uh, it was still in the apartment building. It was outside of the apartment on
619			the fifth floor, kind of near the elevator.
620			
621	Q:		Okay. After you completed the statement from Mr. (Sterling), what did you
622	`		do afterwards?
623			
624	A:		Uh, afterwards, um, I helped Officer (Mathis) uh, lock up the uh, apartment.
625			Mr. (Sterling) had some belongings inside the apartment that he needed to

626 627			retrieve. Uh, clothing and also his wallet so we allowed him to grab that before securing the apartment.
628 629	Q:		Okay. And who's keys did you guys use to secure the apartment?
630 631 632	A:		I believe it was uh, Mr. (Hayes), (John Hayes).
633 634	Q:		How do you know Mr. (Hayes)?
635 636	A:		Uh, I – I learned about him from (Sterling) during the statement.
637 638	Q:		Got it.
639 640	A:		Um, yeah.
641 642 643	Q:		Okay. And after you uh, helped uh, secure the apartment, what did you do afterwards – after that?
644 645	A:		Uh, I'd went back to the police station to start writing supplemental report.
546 647 648 649 650	Q:		Okay. Couple more questions. One is, when you received the radio broadcawhen you got prompted to go based on radio broadcast and when you went upstairs and you started assisting in uh, controlling Mr. (Moore), did you know at the time, why Officer were – why Mr. (Moore) was in handcuffs?
651 652	A:		No.
653 654 655 656	Q:		Okay. Um, uh, while you were there while Mr. (Moore) was in handcuffs and uh, and all the – all divisions you told us already, did you at any point see any of the officers, including yourself, strike Mr. (Moore) with uh, open hand or closed – closed fist?
657 658	A:	ų.	No.
659			
660 661	Q:		Do you see any officer deploy uh, OC?
662 663	A:		No.
664 665	Q:		Did you – you see any officer uh, strike Mr. (Moore) with the baton?
666 667	A:		No.
668 669	Q:		Did you see any officer strike with any type of blunt object?
670	A:		No.

671		
672	Q:	Did anybody discharge their firearm?
673		
674	A:	No.
675		
676	Q:	Did anybody use their uh, duty pistol to strike Mr. (Moore) with?
677	Ψ.	
678	A:	No.
679	11.	110.
680	Q:	Um, the – including – in addition to the officers you mentioned, how many –
681	Q.	which sergeants do you recall seeing on scene or in or around the property at
682		the time of the incident?
		the time of the incident?
683	A	Consent who (Dhillian) and Consent (Condens)
684	A:	Sergeant uh, (Phillips) and Sergeant (Cordoza).
685		
686	Q:	Okay. Did you recall seeing any other sergeant right before that?
687		
688	A:	No.
689		
690	Q:	Okay. Did you see any other rank officer other than sergeant or officer there
691		on scene?
692		
693	A:	No.
694		
695	Q:	Okay. Uh, um, anything?
696	-	
697	Q1:	I don't actually.
698		·
699	Q2:	I have a few. Did anybody, including yourself, kick Mr. (Moore)?
700		
701	A:	No.
702	• • •	
703	Q2:	All right. Do you use uh, I'm reviewing your supplemental report, okay. All
704	V2.	right. You used the phrase in the second line, "Laying face down." Uh, do
705		you mean that literally, Mr. (Moore)'s face was in the mattress or can you
706		clarify that.
707		ciality that.
	A :-	No. It didn't appear his face was actually on the mattress. When I say face
708	A:	
709		down, I mean that as uh, being basically, on his stomach. Um, that direction,
710		but to my recollection, there was a gap in between the mattress and the wall
711		and uh, I don't believe his face was actually directly pressed into the mattress.
712	00	
713	Q2:	Could he – I know you don't know whether he could breathe but he – he
714		appeared to have the ability to breathe based on his position that you
715		observed?

716		
717	A:	Yes.
718		
719	Q2:	Do you ever have any prior encounters with Mr. (Xavier Moore)?
720		
721	A:	Yes.
722		
723	Q2:	Can you describe them?
724	138	
725	A:	Yes. I um, I had some contacts with uh, (Xavier Moore) when he used to live
726		at the uh, University Hotel on uh, University Avenue when I worked at Beat
727		3. Um, during those incidences, there was uh, disturbances and also fights
728		involving himself and uh, other tenants. Um, there was also disturbance calls
729		relating with him and uh, drug use-um, specifically erack cocaine. Uh,
730		disputes regarding that.
731	14	
732	Q2:	Did you ever have the opportunity to speak to one of his relatives about Mr.
733	4	(Xavier Moore)?
734		(======================================
735	A:	Yes, I spoke to his mother.
736	11.	100, 1 50000 10 100 1001011
737	Q2:	What was the nature of that conversation if you recall?
738	ζ2.	, , , , , , , , , , , , , , , , , , , ,
739	A:	Uh, Mr. (Moore)'s mother was concerned uh, about (Xavier)'s welfare. Uh,
740		she expressed to me-concerns of his uh, psychiatric behavior and also his uh,
741		drug use. That she was concerned about – uh, she was also concerned that the
742		location that he was living at uh, was not the best environment and also not
743		the safest for him specifically.
744		the burest for many specialists.
745	Q2:	I don't have any other questions.
746	X	, , ,
747	Q:	Me either. Uh, you have anything else you want to add?
748	C 1	2.20 02.20.00 02.3, y 2.20 2.20.00 y 2.20 y 2
749	A:	No.
750		
751	Q:	Okay. It's 2205 hours. 2205 hours. End of interview with Officer Kastmiler.
752	Α	Chay: 1. 6 2205 110 110. 1205 110 110 110 110 110 110 110 110 110 1
753		
754	This trans	script has been reviewed with the audio recording submitted and it is an accurate
755	transcripti	4
756	Signed	1044
150	Jigireu	

BERKELEY POLICE DEPARTMENT

2	
3	
4	CASE NO
5	(PRINT) 2-14-13
6	CASE NO
7	
8	
9	STATEMENT TO INVOLVED OFFICER:
10	SET.
11	Officer AMBER PAILLIES, you are being represented here at this interview by
12	your attorney, Harry STER). You are not in custody and you are free to
13	conclude the interview at any time. You are not obligated to answer any questions.
14	Conclude the interview at any tame. You are 100 02-8000 to make you
15	Any answers you do give may be used in a court of law. Having this in mind, do you
16	
17	wish to voluntarily proceed with the interview?
18	
19	
20	AMBER PHILLIPS OFFICER NAME SIGNATURE
21	111
22	ATTORNEY NAME SIGNATURE
23	
24	INVESTIGATOR NAME SIGNATURE
25	

1		
2 3		
4 5		
6		
7		INTERVIEW WITH SGT. (AMBER) PHILLIPS
8		Q=Sgt. Hong Q1=Ofc. Jesse Grant
9 10		A=Sgt. (Amber) Phillips
11		A1=(Harry) Stern
12		
13		141 2020 Language With Corcoont (Amhor)
14	Q:	All right February 14th, 2020 hours. Interview with Sergeant (Amber) Phillips. Uh, I am Sergeant Hong, H-O-N-G.
15 16		Finnips. On, I am Sergeant Hong, II-O-IV-G.
17	Q1:	Officer Jesse Grant, J-E-S-S-E, G-R-A-N-T.
18		
19	A:	Sergeant (Amber) Phillips, last name P-H-I-L-L-I-P-S.
20 21	A1:	I'm (Harry) Stern, S-T-E-R-N.
22		
23	Q:	Uh, Sergeant Phillips, uh, you are - you're, uh, you're rank of sergeant. Your
24 25		badge number please?
26	A:	S-17.
27		
28	Q:	Okay and what was your hire date with Berkeley Police?
29 30	A:	July I think s- 6 or something 2004. July of 2004.
31	A.	
32	Q:	Okay do you have any prior law enforcement experience?
33		N
34 35	A:	No.
36	Q: =	Which patrol operations team do you work?
37		
38	A:	Team four.
39	0.	What are your normal days worked and normal hours worked?
40 41	Q:	what are your norman days worked and norman hours worked.
42	A:	Monday through Thursday 2030 to 0630 hours.
43		

44 45 46	Q:	O- uh, and when we speak of the date of incident we're speaking of February 12th wi- w- which was a Tuesday and the time of report was somewhere between 11:30 and midnight?
47 48 49	A:	Yeah.
50 51	Q:	All right 11:30 pm and midnight. So, uh, what was your call sign during, uh, your shift on Tuesday the 12th?
52 53 54	A:	Call sign was S as - as in Sam 17. So S-17.
55	Q:	Okay and your area of responsibility as S-17?
56 57	A:	Uh, just patrol p- um, super- patrol supervisor, uh, in charge of team four.
58 59	Q:	Got it. And you're city wide?
60 61	A:	City wide.
62 63	Q:	Okay. Uh, who was your commanding officer a- during this shift?
64 65	A:	Lieutenant Files.
66 67 68	Q:	Okay. Is he - is Lieutenant Files, F-I-L-E-S, is he your normal commanding officer?
69 70	A:	Yes.
71 72	Q:	And he is - is lieutenant basically the Watch Commander correct?
73 74	A:	Correct.
75 76 77	Q:	Okay. Prior to the Tuesday shift, um, what sh- what - what was the last shift you worked prior to Tuesday shift?
78 79	A:	Uh, the Monday shift starting at 2030 hours.
80 81	Q: -	Okay. Do you hold any secondary jobs?
82 83	A:	No.
84 85	Q:	Prior to Tuesday's shift did you, uh, work any overtime?
86 87 88	A:	No.

89 90	Q;	Okay. Um, had you taken any medication during this period? Prescription or otherwise.
91 92 93	A:	Uh, prescription.
94 95	Q:	Uh, um, can you say what
96 97	A1:	And so I would
98 99	Q:	uh
100 101 102 103	A1:	uh, the only thing I would ask her, uh, or ask that she'd answer the question only if it's, uh, a prescription medication that would affect her ability to perceive, react, or affect her memory. So is it any of those categories?
103 104 105	A:	No it was not.
106 107	A1:	Okay other than that I instruct her not to answer the question.
108 109 110	Q:	Got it, accepted okay. Uh, ha- have you consumed any alcohol in the past 24 hours?
111 112	A:	No.
113 114	Q:	Do you have any medical conditions?
115 116	A:	No.
117 118 119	Q:	Uh, prior to Tuesday's shift, uh, or just before Tuesday's shift, uh, when was the last time you slept and how long and between what hours?
120 121 122	A:	It would've been Tuesday morning from about - I'd say maybe 8:00 or 8:30 am - it's probably about 8:30 am to 2:00 or e- 1400. It's pretty sporadic. I'd say it's pro- maybe five hours I get during the day.
123 124 125 126 127	Q:	Okay - okay. Now when I speak of the incident we're talkin' about the incident, uh, that occurred on Tuesday the 12th, uh, that occurred at, uh, 2116 Allston Way in Apartment 514 okay. Uh, did you sustain any injuries during this incident?
128 129 130	A:	No.
131 132	Q:	Excuse me. Do you wear corrective eye glasses or contact lenses?
133	A:	No.

134 135	Q:	All right. Starting from your, uh, front belt buckle going clockwise could you
136		describe what duty gear is on your duty belt?
137 138 139	A:	Mmm clockwise oh, from my belt buckle I think it's - I've got my keys, uh, department keys. Then I have my firearm. Um, a keeper with a set of handcuffs attached. Then it's my, uh, OC pepper spray. Then I have, uh,
140 141		handcuffs - case with a pair of handcuffs in the back. Mmm, sorry
142		(unintelligible) over here. Maga- oh flashlight, magazine pouch and then just
143		a, uh, key ring holder whatever that is. Couple keepers in between and that's
144		it.
145		The state of the s
146	Q:	Okay. Did your duty belt or duty gear sustain any damage?
147		Ma
148	A:	No.
149 150	Q:	Okay. Uh, what vehicle make and model were you driving dur- driving
151	٧٠	during Tuesday's shift?
152		
153	A:	I was driving, uh, a marked, uh, patrol vehicle number 1745 and it's a BPD
154		marked patrol vehicle. Marked also with a supervisor so it's a supervisor car.
155		It's a Ford Crown Vic.
156	0.	Got it. And it has emergency equipment?
157 158	Q:	Got It. And It has omergency of the
159	A:	Mm-hm.
160		
161	Q:	All right.
162		P 14-
163	A:	Emergency lights.
164	0.	Do you normally drive this particular vehicle?
165 166	Q:	Do you not many arrive time p
167	A:	Uh, yeah fairly regularly.
168		
169	Q:	Okay. And are you a single, uh, uh, car or are you a paired officer car?
170		
171	A:	Single.
172	0.	Okay. Okay so you've, uh, prepared a supplemental report do-documenting
173 174	Q:	the, uh, incident correct?
175		 ,,
176	A:	Correct.
177		11 list when said it for your places?
178	Q:	And prior to your submission could you just, uh, read it for us please?

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220 221 Q: 222

Yeah. On February 13th, 2013 at about 0030 hours I responded to 2216 Allston Way, Apartment 514 because officers were requesting code three cover. I arrived on scene with Sergeant cardo- (Cardoza) about 0033 hours and we had both entered the apart e- apartment four - 514 together. When I entered the apartment I saw Officer (To), Officer (Brown) (unintelligible) Officer (To) badge 38, Officer (Brown) number 16, Officer (Gardner) 121 and Officer (Mathis) number 80 attempting to restrain an individual on a mattress on the floor of the living room area. The person they were restraining who was later identified as (Moore) was lying on his stomach with his hands cuffed behind his back. (Moore) was violently kicking at officers. Particularly Offic- Officer (Mathis) who was attempting to ga- gain control of his feet. Sergeant (Cardoza) deployed the WRAP Restraint Device and I provided the ankle strap to Officer (Mathis) who secured (Moore)'s ankles. Officers did not attempt to place the leg and chest pieces of the WRAP Restraint Device on (Moore) due to his large size, approximately 350 plus pounds. At about 0034 hours I contacted BPD dispatch via radio and requested that BFD respond to our location with a gurney. I requested the gurney because it was apparent that officers would be unable to move or lift (Moore) do hi- due to his large size especially since his apartment was on the fifth floor. Once (Moore) calmed down officers rolled him on his left side and Officer (Brown) confirmed he was breathing and had a pulse. Although although (Moore) was breathing it appeared he was having difficulty. I advised BPD dispatch that we would also need BFD paramedics because (Brown) was having difficulty breathing. At around 0041 hours Officer (Brown) noticed that (Moore) was no longer breathing and did not have a pulse. At this time I advised BPD dispatch that (Moore) was not breathing and that officers would be starting CPR. Officers immediately removed the handcuffs from (Moore) and placed him on his back. Officer (To) gave (Moore) chest compressions until BFD arrived on scene and took over. Once (Moore) was transported to Alta Bates Hospital by BFD I assisted Sergeant (Cardoza) in managing the scene and did the following. Uh, Sergeant car-(Cardoza) and I directed Officer (To) to follow BFD -- excuse me -- to Alta Bates Hospital to get an update on (Moore)'s condition. I then directed, uh, Officer (Macintosh) to conduct a canvas of the fifth floor or 2116 Allston Way to determine if any neighbors had contact with (Moore) prior to our arrival. I directed Officer (Castenmiller) to take a written statement from (Sterling). I contacted Officer (Smith) via phone while he was in the BPD jail and directed him to take a written statement from (Haze) and at about 0204 hours Sergeant (Cardoza) took over the scene as being supervisor and I was released from the scene.

Okay thank you. Okay so, uh, Sergeant Phillips you heard a radio broadcast, uh, as you indicate in your police report requesting code three cover. Could

223 224		you tell us, uh, or can you recollect who made that, uh, radio broadcast request and could you specify if you can, uh, remember what words were used?
225 226 227 228 229 230 231	A:	Uh, i- it was Officer (Brown) and she said something to the effect of send us more cover and I could hear screaming in the background. I didn't hear the words code three but the radio traffic seemed a little bit choppy but I could hear send us more cover, uh, and then screaming which i- what seemed apparent to me that they were in need of us- of si- assistance.
232 233 234	Q:	Okay and you felt that, uh, they were in need of immediate assistance so you, uh, went, uh, responded in a code three fashion correct?
235 236	A:	Yes correct.
237 238	Q:	So we- where were you coming from?
239 240	A:	I came from the station. I was inside my patrol vehicle parked in the south lot.
241 242	Q:	Okay. And when you arrived, uh, who did you arrive with again?
243 244 245	A:	When I arrived, uh, there were several police cars there but officer - or Sergeant (Cardoza) was the one that - we were on scene at the same time and we went in the elevator at the same time up to the fifth floor.
246 247 248 249	Q:	Uh, was the front door already, uh, the main door on the ground floor was it already open or unlocked
250 251	A:	Yeah.
252 253	Q:	in order for you to gain entry?
254 255 256	A:	Mm-hm the main door - someone had stuck - I don't know if it was a bench or some - some sort of object in the doorway so it was open for us to get in.
257 258 259	Q:	Okay. And you took - it was just the two of you? You and Sergeant (Cardoza) went upstairs?
260 261	A:	Yeah, uh, we took the elevator.
262 263	Q:	I'm sorry, you took the elevator up
264 265	A:	Yeah.
266 267	Q:	to the fifth floor to Apartment 514?

Mm-hm. 268 A: 269 Okay. When you arrived at Apartment 514 before, uh, looking inside, uh, 270 Q: what was the general description of your surroundings? 271 272 So when you go - when you go in, uh, when I ca- when we came in off the 273 A: elevator I immediately saw a black male standing on the corner like a couple 274 doors down from - from the apartment. I figured he was either somebody that 275 276 knew or he was a neighbor that was just waiting. I just - I just happened to notice 'cause he seemed to be the only one really standing by just not moving. 277 Uh, and it - it - it's a - it's like a - shaped like square on the inside but it's got a 278 I - the lob- I don't know what the lobby or whatever you call it in the middle. 279 So it's five fl- five levels, um, almost like tiers of apartment - apartments that 280 are all on in a circular or kind of surrounding. Um, I didn't see - I didn't notice 281 really anybody else. I didn't see any other officers and so I knew - I could see 282 that the door was open once I came out of the elevator that the front door was, 283 uh. w- that was the only door that looked open to me. So I assumed that was 284 the apartment. 285 286 Okay. So there was no other officers on the landing (unintelligible)... 287 Q: 288 Not that I recall no. 289 A: 290 Okay. So you - you see an open door to the apartment and when you first 291 Q: look in what is your first observation you see? 292 293 Right when you first walk in, I look in and I can see immediately, uh, I see -294 A: now I recall it's, uh, I believe five officers and there's a, uh, I didn't know at 295 the time male or female but a, uh, a - a black person, um, that was laying on 296 their stomach in handcuffs - two sets of handcuffs that I recar- uh, recall and, 297 uh, there were officers holding like his extremities. Like arms, legs, um, and 298 the person was kicking and I remember that (Mathis) - Officer (Mathis) was 299 the one by the feet and the person was kicking the feet and he, you know, um, 300 and I remember someone saying get a spit mask, uh, with a ra- we were a-301 they were askin' about the WRAP and we were like we have the WRAP. Uh, 302 Sergeant (Cardoza) had - said he had grabbed the WRAP out of my car so 303 when we - we arrived we had it with us and we started to take the WRAP out 304 of the, uh, the bag. 305 306 Okay. And (unintelligible), uh, real briefly so when you - upon entering you 307 Q: saw a - a person lying on his stomach? 308 309 Yeah. 310 A:

Was he on the ground or any - or was - where - where was he lying o...

311

312

O:

313		
314	A:	They were, uh, there was like - it looked like two probably futon mattresses.
315		Um, I don't know what else you'd call 'em but they weren't standard mattresses
316		but they were on the floor of the living room area. It's a very - a small
317		apartment where it was like a living room kitchen area, um, and the person
318		was on the mattress and all of the officers were as well.
319		
320	Q:	Okay. And you said he was already handcuffed when you arrived?
321	C2.	
322	A:	Yeah.
323°	100	2.
324	Q:	Okay. And you describe, uh, officers, uh, holding down this person by
325	~ •	holding down their, uh, ex- uh, arms and legs?
326		nording do vivi directly direc
327	A:	Yeah.
328	A.	1 can.
	0.	Did you see any of these officers holding this person down by holding down
329	Q:	their head, neck, chest area or stomach area?
330		men nead, neck, chest area or stomach area:
331	A (m)	No I specifically remember - what I did remember was that Officer (Brown)
332	A:	was closest to the head and that i- I couldn't see anybody applying any for-
333		Was closest to the nead and that I- I couldn't see anybody applying any for
334		you know, pressure or anything to the head but I remember that she was
335		closest to the head and the other - the larger male officers were holding down
336		- tryin' to hold down the body. Um, arms and legs and the
337		
338	Q:	Okay.
339		
340	A:	legs were the - and him kicking was the problem.
341		
342	Q:	Okay. Um, the officers that were holding down the arms and the upper
343		portion of the body, do you recall which officers they were?
344		
345	A:	I know, um, Officer (To) I believe was on the other side a- s- I - I do
346		believe he was on the upper body area. I think Officer (Smith) as well and I
347		believe Officer (Gardner) and Officer (Mathis) were the two tryin' to - or near
348		the legs at the bottom half of the body.
349		
350	Q:	Okay. Now you're saying that this person, uh, was kicking?
351	ζ.	
352	A:	Yeah.
353	11.	* ************************************
354	Q:	All right. And you're talking kicking, slashing, uh, uh, at the officers is that
355	٧٠	,
356	A:	Yeah.
	Λ.	i baii.
357		

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...correct? Okay. And you said Officer (Mathis) - what was Officer (Mathis) 358 Q: doin' again? 359 360 He was trying to hold down the legs and I remember the, uh, the subject was 361 A: kicking and he yelled, "Give me the ankle" - we were takin' the WRAP out 362 and he says, "Give me the a- we need to - we need to secure the ankles." And 363 so I handed him the ankle thing and he wrapped the - his ankles and that 364 obviously stopped the kicking. 365 366 Oh good. Okay so the a- uh, the thing you're referring to is a strap that is part 367 Q: of the WRAP Device correct? 368 369 Right correct. 370 A: 371 And - and he - and Officer (Mathis) used that to restrain the - what part of the 372 Q: legs of the - the subject? 373 374 Just the - both ankles, um, had the - I believe the ankles were crossed and he 375 A: used the - the device to - used the Velcro and - and - and restrain him. 376 377 Before we go further can you best of your recollection describe this person? 378 Q: Meaning height, weight, stature etcetera. 379 380 From what I could tell and I - again I couldn't tell if it was a male or female 381 A: because I could te- I could see that there appeared to be long braids. Um, and 382 I remember asking Officer (Brown) is it a male or a female? The body type, 383 um, it - it was - I could tell it was a b- a person that was African American, 384 black. Um, and the person looked - they probably weighed I would say 385 somewhere between 350 - 380 pounds. Um, and from the body type and from 386 the back - and the person was nude. Um, I - there might've been a piece of 387 clothing close to the ankle area, um, but for the most part the whole back area 388 and the - and the - and the butt area was exposed and I could see that there -389 the - that he was nude. Um, and I asked Officer (Brown) i- is - is it male or 390 female. I know that wasn't - for me it was in my mind. It's just - I don't know 391 who we're dealing with and - or what we're dealing with and if it is female 392 there's other, you know, factors that could be at play. So I asked and then she 393 told me it's a male but it was a, uh, pre-op transgender or transsexual or 394 somethin' like that and I said okay. And that's when I - I recognized who - I 395 knew who it was. I knew exactly who it was. 396 397 Okay. Now, uh, while you're observing the officers tryin' to keep, uh, Mr. 398 Q: (Moore) - we're gonna refer to... 399 400 Yeah. 401 A: 402

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...this person as Mr. (Moore). His name is (Xavier Moore). 403 Q: 404 Right. 405 A: 406 While the officers are tryin' to keep him controlled, uh, did you at - did you 407 Q: feel that the officers had control or they were having a difficult time with Mr. 408 (Moore)? 409 410 In the beginning they were having difficulty, uh, a lot of difficulty. And then 411 A: once, uh, Officer (Mathis) put the ankle restraints on, um, he slowly started to 412 calm down. They were asking for a spit mask and I was tryin' to put it out on 413 the radio to make sure that we got that. Um, I didn't notice if he was spitting 414 or not. I just know they were saying get us a spit mask s- and I was - got on 415 the radio and said next person up needs to bring us a spit mask. Um, so I 416 figured he - I - they were still actively struggling and then, um, it seemed like 417 maybe a minute or so - two and, uh, Mr. (Moore) just, uh, stopped - slowly 418 stopped resisting. You know, it - it just seemed like he just started to calm 419 down and just lay there. 420 421 Okay. So between the time that, uh, the ankle, uh, restraints were placed on 422 Q: him and there's a minute timeframe where he slowly started to calm down -423 just prior to that, between the time you entered to the prior time - to just prior 424 to him calming down, was he saying anything? Was he screaming anything 425 do you recall? 426 427 I don't recall there being screaming or - or - or, uh, yelling at that point. Um, I 428 A: remember officers saying like stop move - stop resisting, stop moving kinda 429 thing. Uh, he was movin' around and they were just - they co- they were 430 having a hard time controlling him and everyone tried to figure out where to 431 go with the large indi- naked individual. You know, it was - it was - they 432 were definitely struggling. I can't reme- I don't recall screaming - him 433 screaming or saying anything, um, at that point. 434 435 Okay. 436 Q: 437 At the time I was... 438 A: 439 Was it apparent at that point that he was breathing? 440 O: 441 442 A: ...yes. 443 Okay. Uh, during that period of time was he complaining of pain of any sort 444 Q: or asking for a ambulance or saying he couldn't breath or verbalizing in any 445 way that he was having physical problems? 446

447

No not - not at any time when I was there did he ever - like I said say 448 A: anything, ask for help, say he couldn't breath, say that anybody was on his 449 back or anything like that. He nev- that never came out. 450 451 Okay. 452 Q: 453 And, you know, we have that happen all the time and nothing - he never said 454 A: any of that. 455 456 Uh, and then he, uh, slowly started calming down now you said and once he 457 O: did - he eventually did calm down? 458 459 Mm-hm. 460 A: 461 Okay. And once, uh, he's now ca- um, calmed down, uh, w- what happened 462 Q: now as - as he's now calm? 463 464 Once he calms down i- it's - I - at some point I think Officer (Castenmiller) 465 A: came in - other officers - it was like - it was - it was obvious that no - we no 466 longer needed five officers I think. I don't know how the decision was made 467 but I know Officer (To) I re- I - I saw that he was sweating and appeared to 168 be, you know, kind of out of breath and I - he asked - he said, "Do you guys 469 have it? Is it okay if, you know, can I just take a break for a second?" And I 470 said go outside. 471 472 Mm-hm. 473 Q: 474 Um, take a breath. I couldn't tell - I, you know, was worried about him being 475 A: injured or, you know, just - he seemed exhausted. So I sent him outside. Um, 476 and I - 'cause I knew at that point I believe Officer (Castenmiller) was there 477 but he wasn't the, uh, Mr. Miller w- Moore, excuse me, was no longer 478 fighting. So it was just kind of - officers were sitting there with the hands on 479 him just in case. Um, but there really wasn't any, uh, anything, you know, 480 there wasn't any resisting going on. And then at some point o- Officer 481 (Gardner) and (Mathis) I believe leave, um, and I think Officer - Officer (To) I 482 know for sure comes back and I remember that's when, um, (Gwen) or Officer 483 (Brown) says, you know, looks over and like is he breathing? And I look and 484 I said is he breathing s- I mean is his chest moving? Um, he was laying on his 485 left side at this point and the officers again were just waiting - we were waitin' 486 for BFD the whole time. Uh... 487 488 Uh, when he was calmed down he was just laying there and you guys were 489 Q: 490 just... 491

On his left s...

492

A:

holding or just placing your hands and holding him
amm-hm.
CC it's a lander on ton of an nucleing down
still? At - was there any officer sitting or laying on top of or pushing down
on the parts of Mr. (Moore)'s head and neck, chest, stomach or any of those
areas of the body?
No.
Okay.
And in fact I could see his fa- profile now. You know, he was laying
completing on his left side. Officer (Brown) was near his head and I could
see, you know, see his face and I knew I recognized him. Um, and that was,
you know, we were just waiting. It was just waiting and no one was applying
any pressure.
K
Okay. So wa- when you looked to see if he was breathing he was at that point
still breathing correct? When
Yeah so - yeah so Officer (Brown) like I said, you know, looks and says a- is
he breathing? And I look over and, uh, she says (Xavier), you know, uh, then
she kinda shakes him and at that point I see his chest move and I - he t- he -
moves his head and he looks u- like he opened his eyes 'cause I think his eyes
were closed before that. Uh, and so then I go- I said he's breathing and, uh, I'd
say maybe less than a minute is when he stopped breathing but I - the radio
traffic went out, uh, BF- or dispatch says - asks me, "Do you just need a
gurney or you need medical?" And I said, uh, we're gonna need medical.
He's - he's having difficulty breathing.
Okay. Initially you asked just for a gurney?
I did.
Okay all right.
I said code three but my - my reasoning behind that was, um, one, I - there
was no way we were gonna be able to move him; uh, two, I wanted
paramedics there in case something went wrong because we were dealing with
a - a v- we weren't - w- the officers weren't gonna be able to pick him. We're
on the fifth floor - an apartment and I figured if there was any medical
attention needed, the fire department would be there. Um, and that, you
know, the gurney was gonna be the only safe way to get a- to get him out of

538 539		there. Um, so I also made the assumption that no matter what BFD was come - was - was gonna come with medical. So I didn't think that that question,
540		you know what - I didn't know that they were gonna ask me that question. I
541		assumed they were gonna come code three like I requested, um, and that
542		would include, uh, an ambulance and an engine, um
543		, , , , , , , , , , , , , , , , , , ,
544	Q:	Okay. So wa- but when you, uh, who first noticed him - that Mr. (Moore)
545	ζ.	stopped breathing do you recall?
546		
547	A:	I think it was Officer (Brown).
548		
549	Q:	Okay.
550		
551	A:	Or w- when he stopped breathing?
552		
553	Q:	When he stopped breathing.
554		
555	A:	Yeah it was - it was - it had happened really quickly from the time he was
556		breathing to not breathing. I - she might've said it and I know that at some
557		point I said I don't think he's breathing. So somewhere in between 30 seconds
558		to a minute, uh, both of us noticed that
559		
560	Q:	0
561		
562	A:	and
563		
564	Q:	okay.
565		
566	A:	she started, you know, yelling his name and, uh, you know, we tried to roll
567		him o- I was like take off the handcuffs and they rolled him on his back.
568		
569	Q:	Okay so - and then when you - when you noticed that he wasn't breathing was
570		it you that made that ra- radio broadcast for emergency medical because - and
571		you verbalize on the radio that no longer was this person breathing?
572		The state of the s
573	A:	I said, uh, subject is no longer - is - subject is not breathing. I don't know if I -
574		I don't think I said he didn't have a pulse. I think I said s- subject is not
575		breathing. We're starting CPR.
576		0.44.1
577	Q:	Got it okay.
578		I TL
579	A:	Uh
580	0	And - and you order officers to remove the handcuffs?
581	Q:	And - and you order officers to remove the handours:
582		202

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Yeah. 583 A: 584 Okay. Uh, then did that occur? 585 Q: 586 Yeah. 587 A: 588 Okay. 589 Q: 590 They took 'em off right away. 591 A: 592 All right and once the handcuffs were removed what - what did you do -593 O: positioning of Mr. (Moore) at that point? 594 595 They, uh, rolled him completely on his back and, uh, Officer (Brown) was by 596 A: his head. Officer (To) immediately started chest compressions and then, uh, 597 Officer (Castenmiller) was, um, I think on the - toward - by the bottom half 598 kinda by his legs just, you know, standing by because I asked, uh, I had asked 599 (To) - he started swe- you know, it - it was a lot of work for him and then I 600 said do you need to switch out? And I was askin' him if he needed him to - to 601 (Castenmiller) to switch out and he just continued until, uh, BFD arrived. So 602 they never switched but (Castenmiller) was there just providing, you know, 503 support in case he needed to... 604 605 Okay. Um, uh, so eventually paramedics came? 606 Q: 607 Mm-hm. 608 A: 609 Okay. And, uh, just briefly describe - they came in and they worked on Mr. 610 0: (Moore) correct? 611 612 Yeah so they ca- they c- they came in, um, officers, you know, were told to -613 A: to get out - it's a really small space and so they all - they all came out. I think, 614 um, probably Officer (Brown) and I and maybe Officer (To) were still in there 615 and they were askin' questions about name and - and - and medical history and 616 we were tryin' to give 'em as much information as we could. They started, uh, 617 they put that chest compression machine on him right away and they started 618 having that manually do, uh, chest compressions. Um, then we were tryin' to 619 give as much information as possible and, um, letting them know that we b-620 we knew that he had a drug history. Uh, 'cause they were asking us is he 621 under the influence of drugs or alcohol? I didn't - at the time didn't know if 622 anything - if he was under the influence of alcohol at all but I told them that 623 he has prior history of, uh, drug use of, uh, smoking crack. I went outside and 624 I talked to the guy that was, uh, that was his friend. He said he was his 625 caretaker. And he told me that he, um, uses meth, he uses heroin, smokes 626 weed and drinks alcohol and that he usually drinks on a regular basis. And so 627

I went back - ran back and told BFD - BFD that. And then I helped them, you 628 know, they took everything basically almost - all the mattresses and 629 everything out of the living room, put that in the bathroom area 'cause they 630 didn't have enough space to work. 631 632 Okay. Where d- where were those mattresses in relation... 633 Q: 634 Th... 635 A: 636 ...to the apartment how it's set up? 637 Q: 638 ...so when you walk directly in, there's a bathroom on the left. And to the left 639 A: there's a little hall closet to the left as well, next to the bathroom. And you 640 walk - when you walk straight, um, right down that hallway the - the 641 mattresses were right on the floor and it would be a c- a - it was across from 642 the kitchen area, um, and they were in the corner. And then there was like a 643 little bedroom behind I guess that living area. Um, I didn't notice if there's - it 644 was open but I don't know if there's a door or not. But it was just - they were 645 laying on the - the mattresses were laying on the corner, uh, on the floor in the 646 corner. 647 548 Okay. And, um, uh, eventually the paramedics leave with Mr. (Moore)... 649 O: 650 Mm-hm. 651 A: 652 ...as they're working wi- on him? Okay. Once the paramedics are leaving was 653 Q: there an officer assigned to, uh, e- to accompany the paramedics? 654 655 N- uh, not right away and then, uh, Sergeant (Cardoza) was - spoke to Officer 656 A: (Brown) and Officer (To) and was like, you know, tryin' to determine who 657 was handling the case and Officer (Brown) said it was her case. So then he 658 told Officer (To) your - you go - somebody needed to go with the ambulance. 659 So Officer (To) was sent with the ambulance and Officer (Brown) I believe 660 was sent 1019. Came back to the station to write a report. 661 662 Okay. So I'll ask this at this point, who - who has been - who was designated 0: 663 - upon your e- your arrival and officer - or Sergeant (Cardoza)'s arrival 664 together, uh, who assumed scene supervising, uh, uh, role? 665 666 That wasn't assumed until after BFD had taken - tra- transported, uh, Mr. 667 A: (Moore). 668 669 Mm-hm. Q: 570

And Sergeant (Cardoza) seemed the role as - assumed supervisor when, uh, 672 A: Officer (Brown) was assigned as the handling officer. 673 674 Okay. So Officer (To) is now accompanying the fire paramedics to the 675 Q: hospital? 676 677 Yeah. 678 A: 679 Okay all right. So once, uh, the paramedics have taken Mr. (Moore), uh, what 680 Q: was your role, uh, while you were there with, uh, with Sergeant (Cardoza)? 681 682 I, uh, just assisted. I - I - I knew that it was gonna be important for us to start 683 A: getting statements from people and there were a lo- there were a lot of 684 neighbors that had come out during the whole incident. So, um, Officer ma-685 (Mathis) was talkin' to a couple of them. I immediately assigned Officer 686 (Castenmiller) to, uh, get a written statement from the, uh, caretaker. I can't 687 remember what his name is. Uh, (Sterling) - last... 688 689 Correct. 690 Q: 691 ...name (Sterling). 592 A: 693 Correct. 694 Q: 695 Um, I said I need you to get a written statement from him and we need to get, 696 A: you know, just go over his medical history 'cause he was saying he was the 697 caretaker and - and get some information. So he - he took a written statement 698 from him on scene. Then I - I requested another officer to the scene to - to 699 help with the canvas and that was Officer (Macintosh) and I directed him to 700 knock on every door on the fifth floor that Officer (Mathis) hadn't already 701 done and just check and see if anybody had any prior contacts, um, with Mr. 702 (Moore) before we arrived on scene or if they knew anything about him 703 basically. Um, and then when I went outside with Sergeant (Cardoza) and 704 Sergeant (Ross) I told ser- car- Sergeant (Cardoza) that, um, I wanted 705 somebody to swap out with Officer (To). I didn't think that he should be at 706 the hospital. And so I to- I volunteered to go to the hospital just to get Officer 707 (To) back but he s- Sergeant (Cardoza) said he'd go to the hospital and he'd 708 send Officer (To) back to the station to meet with me 'cause I just wanted to 709 talk to him and check in with him. 710 711 Okay. So after that you - you simply, uh, you went back to the station? 712 Q: 713 714 Yeah. A: 715

Okay. Do you recall when the notification of, uh, time of death was for Mr. 716 Q: (Moore) at the hospital? Do you recall who made the notification and how'd 717 you find out? 718 719 Officer (To) called me while I was still outside of the apartment building, um, 720 A: and said that the doctor at Alta Bates -- and I don't know the doctor's name --721 had called the time of death at 0134 hours. And I asked him if he was on his 722 way back. I said are you, you know, to come back and he said he was on his 723 way. 724 725 Okay. Was a technician called at any point (unintelligible)? 726 O: 727 Yeah Sergeant (Cardoza) had called a ID tech, uh, I think right after BFD had 728 A: left sometime and - some - some - at some point he had called the ID tech. I 729 didn't - I didn't do that but yeah the ID tech did show up while we were still 730 there. 731 732 Okay. Do you recall if a tech was sent to the hospital at all? 733 Q: 734 No I don't - not to my knowledge. 735 A: 736 Okay. Uh, couple questions I - I neglected to ask is when - when you received 737 0: a code three of, uh, assistance, uh, request on the radio and you were going to 738 2116 Allston, did you know what the call was all about? 739 740 I - I didn't immediately. Um, I - I didn't - I - I heard the 415 come out but I 741 A: didn't put it together right away until I l- I looked at the call as I was going 742 and it just said, uh, 415, um, and 5150. So in my mind as I was going I was 743 assuming they were s- they were struggling with a 5150. Um, didn't have any 744 idea of the person or the w- you know, the weight or sta- any of that - none of 745 that was - came out or was relevant because I got there pretty quick. I'd say 746 less than a minute. Um, but I - I as- I saw that it was a call and I saw the 747 initial comments of the call was that it was a 5150. I think off his medication 748 or something like that. 749 750 Okay. And when you arrived and, uh, the - Mr. (Moore) was ha- in handcuffs, 751 Q: did you know at that point why Mr. (Moore) was in handcuffs? 752 753 No I didn't. Um, I had no idea ye- I didn't know if he was under arrest or if it 754 A: was a 5150 t- I had no idea at that point. I didn't find out until after I think I 755 asked Officer (Brown). Um, I believe once BFD was on the scene I asked her, 756 uh, what was - what was this about? And she said he had a \$10,000 warrant. 757 758 Okay. So to your knowledge it was because he had a warrant? 759 Q:

761	A:	Yeah that they were tryin' to wrestle in the warrant.
762		
763	Q:	Okay all right. Okay in your, uh, brief observation of Mr. (Moore) can you
764		describe at all what you were, uh, uh, for instance, uh, do - did you believe
765		just based on your brief observation of Mr. (Moore) do you - did you believe
766		that he was, uh, under the influence of any s- of anything?
767		
768	A:	I couldn't tell. I di- again I didn't get enough, uh, I wasn't close enough to,
769		you know, to smell alcohol.
770		V The second of
771	Q:	Mm-hm.
772		
773	A:	And, um, by the time - like said, by the time we were there th- the - the yelling
774		and screaming - so there wasn't like any going - or statements going on so I
775		didn't - I didn't really hear much coming from him. Um, and, uh, the o- by the
776		time I saw, you know, was able to see his - his full face was when the
777		difficulty breathing had started. So I d- there was really no other way to
778	0	assess him or his
779	11 6	
780	Q:	Okay. And, um, during your brief, uh, during the time upon when you arrived
781		and the time that you made all your observations, um, did you at all - first of
782		all, did you at all touch Mr. (Moore)?
783		
784	A:	Uh, I did when BFD was giving him - doing - when they took over, I said to
785		them his ankles are restrained. Do you need me (unintelligible) do you want
786		to take the restraints off?
787		
788	Q:	Mm-hm.
789		
790	A:	And they just said yes. And so I ran over and, uh, I asked Officer
791	-	(Castenmiller) to help me out because I had trouble picking up his legs by
792		myself and taking the restraint off. So I ended up taking the restraint off while
793		a- Officer (Castenmiller) was holding his legs for me.
794		
795	Q:	Okay that was the extent of any time you placed your hands on Mr. (Moore)?
796	ζ.	
797	A:	Y- y- yeah.
798	11.	
799	Q:	O- okay. Uh, during the time that we- uh, immediately after you arrived
800	≺:	during the time to the point where he was - Mr. (Moore) was taken to the
801		hospital, did you at all at any time see any officer, uh, on scene, uh, strike Mr.
802		(Moore) with a open hand or closed fist?
803		
804	A:	No not
UU 1		

806	Q:		Did you
807 808	A:		at all.
809 810	Q:		did you at all see any officer kick Mr. (Moore) in any way?
811 812	A:		No.
813 814	Q:		Did an- did you see any officer deploy their OC and use it on Mr. (Moore)?
815 816	A:		No.
817 818	Q:		Did you at any point see any officer use their (unintelligible) baton or any
819 820			other blunt object, uh, on Mr. (Moore)?
821 822	A:		No.
823 824	Q:		Okay. Did any, uh, officer discharge a firearm?
825 826	A:	<u>k</u> j	No.
827 828	Q:		Did any o- officer use a firearm as a blunt object?
829 830	A:		No.
831 832	Q:		Okay. Um, uh, in terms of arriving officers on scene was yourself and Sergeant (Cardoza), was there any other ranking officer on scene?
833 834 835 836 837	A:		Sergeant (Ross) was on scene, IFO department. Uh, to my knowledge he never came up to the fifth floor and never came inside. I never saw him inside. He was just in front of the apartment building. He - he initially answered up on the radio first as the - as - as the supervisor unit.
838 839 840	Q:		Mm-hm.
841 842	A:		Um, but Sergeant (Cardoza) and I were the first w- we beat him to the s- we were there first.
843 844 845 846	Q:		Okay. Who are the - who - who are the, uh, supervisors working during that - during the time of that incident, which, uh, sergeant rank officers were working with you?
847 848 849	A:		Sergeant, uh, from team three it was Sergeant (Ross) and Sergeant (Cardoza). And then from team four it was myself and Sergeant Huynh, uh, S-26.
850			20

851 Q: 852 853 Okay. Huynh is H-U-Y-N-H-? Okay. And, uh, was - okay other than yourself, Sergeant (Cardoza) and Sergeant (Ross) who was downstairs and never entered the apartment, was there any other, uh, rank officer on scene, um, higher than you?

854 855 856

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893

Not that I recall no.

857 858 Q:

A:

Okay. Um, you said that you had prior - when you - when you saw Mr. (Moore) you recognized him.

860 861 A:

Yeah.

863 Q:

Can you briefly - can you tell us how you recognize him and why?

Yeah, um, I believe - I - I don't know how long ago. It was probably less than a year ago, I, uh, responded to a call with - I know it was Officer (Fleming), Officer (To) and there might've been one or two other officers but, uh, we got a call from Mr. (Moore)'s father somewhere on beat 13. Might be like 66th Street or so- I can't - I can't recall the address but I know it was a beat 13. And, um, Mr. (Moore)'s father was calling saying that his son, uh, uh, was was acting up and he wanted us to 5150 him. Uh, when I got on scene I - I showed up as the scene supervisor. I wasn't requested. I had just - I showed up at the call to see if - 'cause they - I noticed officer had been there for awhile, to see if they needed any help. And when I got there, uh, officers were speaking with, uh, Mr. (Moore)'s father who was adamant about us taking him for a 5150 evaluation because he was upset. He was - he said his son was drunk and using drugs and he didn't want him at his house anymore. And I spent a lot of time explaining to, uh, his father that, you know, unless we would do the evaluation but unless he fits the criteria we can't just force him to go on a 5150. So dad was - he was kind of upset with that. Um, but I then made contact with Mr. (Moore) inside the house and when I did, he - I want to say he - he - well he called me (Michelle). I don't know if he thought I was, uh, another, you know, a former police sergeant or not but he kept calling me by the name (Michelle) and he was like I remember you. Do you remember me? And I di- from my knowledge I couldn't remember that I'd ever had contact with him before. Uh, and so we talked. I - I spent probably I want to say close to 45 minutes talking to Mr. (Moore) and it got to a point of him finally agreeing to go to the hospital. Um, we were - I think we ended up doing a voluntary 5150. I'm not sure if we filled out the green sheet but it was a - I - basically he ended up agreeing to go. And it took m- I spent 45 minutes trying to - to talk to him and (unintelligible) that he needed to go. Um, before he went to the hospital, you know, I asked him - I could tell he had been under the influence of alcohol. When he got up, um, to - I went to search him. I located - I think at least three empty bottles of, uh, vodka - fifth - a fifth of vvodka bottles hidden in the couch, underneath the couch. Uh, one was hidden

in his bag that was with him. And I also located two - I believe one or two crack pipes in his bag, um, before he left. And so he admitted to me at that time that he had been drinking alcohol but he didn't - he told me he hadn't smoked crack, uh, that day. So the dad had, you know, had told us - debriefed us that he has, you know, an issue with alcohol and drugs and that it's an ongoing everyday, uh, struggle and, you know, so we had that whole conversation. So we spent a lot of time with the family and mom showed up later and ultimately it - it ended peacefully and he ended up goin' to the hospital. Uh, but I - I - I specifically remember him because he looks like a - a - a woman. He has, you know, braids in hair and he was dressed like a wo- in woman's clothing. Um, but that his name was (Xavier) and I'm pretty sure he goes by the name (Xavier). I can't - I can't remember. But it was...

That was the one time...

That was...

...then?

...the one time yeah.

Okay. And - and did you know at the, uh, when you walked in did you - when you recognize him - you reco- you remembered he was - he had these, uh, mental health issues...

Yeah.

...on the scene? Okay all right. Uh, uh, do you have anything?

(Amber) when you first came in and you describe that you saw him face down, uh, on the bed and he's still resisting, do you remember the position that his face was in in relation to the bed?

I couldn't see his face because there were so - there were so many officers but it was - he was - he was on his stomach. I can't say that his face was like in the mattress or anything. I could see that his hair - i- i- it's possible his face was turned to the side, um, and that officers were just trying to hold him. I - I - I do - I remember someone asking for the spit mask and thinking is he spitting? So I remember knowing that his - I don't think they had control - that his fa- you know what I mean? They didn't have him face down because I remember thinking they're trying to keep him from spitting at people. Um, but I couldn't see it enough to tell you specifically. Like I didn't get a profile view or anything because, uh, there just were too many officers and his hair was everywhere and I couldn't see.

€16

Q:

A:

Q:

A:

Q:

A:

Q:

Q1:

A:

941	Q1:	Okay. And then once he was on his side	
942	۸.	Mm-hm.	
943 944	A:	[VIIII-11111.	
945	Q1:	could you see his face?	
946	Q1.		
947	A:	Yeah.	
948			
949	Q1:	Okay.	
950			
951	A:	I saw his profile.	
952		0	
953	Q1:	It was clear?	
954			
955	A:	It was clear.	
956			
957	Q1:	Okay.	
958		T. 1	
959	A: "	Yeah.	
960	01.	Uh, and then you - you'd mentioned that you called for BFD init	tially for the
961	Q1:		than y for the
962		gurney.	
963	A:	Mm-hm.	
964 965	A.	Willi-inii.	
966	Q1:	But then you'd also added something about - and you also knew	in addition
967	Q1.	that, you know, by default gonna be paramedics there too. Was	that - do you
968		have a concern about him medically at that point? Did you see	something that
969		worried you or was it just - it's nice to have that extra added	
970			
971	A:	I - I yeah I re- I just figured, um, w- given, you know, his size a	nd condition
972		and that he's been fighting with officers that th- there would be	a potential
973		concer- health concern. Um, I didn't know anything about alcol	nol or drugs if
974		that was a factor at - at all. I just was given a situation that it ta	- it's gonna
975		take five officers to restrain him that there was, you know, that	there was a
976		potential for - for him to be, you know, a- overly excited and, you	ou know, and I
977		was just - would feel relieved if - having the paramedics there in	requested
978		needed any sort of medical help. Um, and I requested - when I	rause I wanted
979		them even though I'd asked for the gurney, I said code three becathem there immediately. One, to try and prevent officers from a	retting injured
980		and from the subject from getting injured. So that was the assur	mption I made
981		that they were coming code three and they were - they were coming that they were - the	ning fully
982		equipped to handle any sort of medical situation if - if need be.	7
983		equipped to mandic any sort of incured steamen in Tribod oc-	
984 985	Q1:	Thank you.	244
703	X1.	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	311

986		
987	A1:	I don't have any questions.
988		
989	Q:	You have anything else you want to add that we may want to (unintelligible)
990		may be good for us to know?
991		
992	A:	No I think that's it. I covered it.
993		
994	Q:	This is the end of the interview with Sergeant (Amber) Phillips. It is 2102
995		hours.
996		
997		
998	This transcript h	has been reviewed with the audio recording submitted and it is an accurate
999	transcription.	
1000	Signed	

BERKELEY POLICE DEPARTMENT

2	
3	
4	CASE NO. 13-08-510
5	(PRINT)
6	CASE NO
7	
8	
9	STATEMENT TO INVOLVED OFFICER:
10	Officer TROWN # G, you are being represented here at this interview by
11	
12	your attorney, SIEIN You are not in custody and you are free to
13	conclude the interview at any time. You are not obligated to answer any questions.
14	conclude the interview at any time. Too are not obligated to answer any questions.
15	Any answers you do give may be used in a court of law. Having this in mind, do you
16	2
17	wish to voluntarily proceed with the interview?
18	3 3 ° ·
19	
20	GIOFIDOLYN BROWN SIGNATURE SIGNATURE
21	111
22	ATTORNEY NAME SIGNATURE
23	1 m
24,	INVESTIGATOR NAME SIGNATURE
25	

3 5 6 INTERVIEW WITH OFC. GWENDOLYN BROWN 7 O=Sgt. Hong 8 Q1=Ofc. Jesse Grant 9 Q2=Harry Stern 10 A=Ofc. Gwendolyn Brown 11 12 13 It's, uh - February 14, 1817 hours. Interview with Officer (Gwen) Brown, 14 Q: case number 13-08510. My name is Sergeant Hong, H-O-N-G. 15 16 Officer Jesse Grant, J-E-S-S-E G-R-A-N-T. 17 Q1: 18 I'm Harry Stern, and that's spelled, uh, H-A-R-R-Y S-T-E-R-N. 19 Q2: 20 Officer Gwendolyn Brown, G-W-E-N-D-O-L-Y-N Brown, B-R-O-W-N. 21 A: 22 So, Officer Brown, could you state your rank and badge number? 23 Q: 24 Police officer badge number 16. 25 A: 26 Okay. What was the date of your hire with BPD? 27 Q: 28 Seven-one-1991. 29 A: 30 Do you have any prior law enforcement experience? 31 Q: 32 Yes. 33 A: 34 And, uh, with who and length of experience - length of service? 35 Q: 36 Um, Richmond PD, approximately two years. 37 A: 38 Uh - which patrol operations team do you work? 39 Q: 40 Patrol. 41 A: 42 Uh, which team? 43 Q: 44 Team three. 45 A:

INTERVIEW WITH OFC. GWENDOLYN BROWN

Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 2

46 47	Q:	What are the normal days worked and normal hours worked? For team thr	ree?
48			
49	A:	Monday through Thursday, uh, the shift starts at -1530 , ends at 0130 .	
50 51	Q:	What area or beat were you assigned to?	
52			
53	A:	Beat four.	
54		10 11 110 -1-4	
55	Q:	Okay. And, uh, when I say specifically at a particular shift, what we're	
56		referrin' to is the date of incident, which gonna be February 12, Tuesday, a	na
57		it occurred sometime, uh, just before midnight, and what – we're gonna be	
58		referring to that shift. Okay, Tuesday the 12th, actually. So on, uh, Tuesday	ay
59		the 12th, uh, which beat were you working?	
60			
61	A:	Beat four.	
62			
63	Q:	Thank you. And, uh, who were your supervisors during that shift?	
64	٧.		
65	A:'	Officer, uh, (Cardoza) - and, uh - I'm sorry, Sergeant (Cardoza) and Serge	ant
66	11.	(Ross).	
67		(2000)	
68	Q:	(Ross). Are they your normal supervisors?	
69	Q.	(1000). 110 (10)	
70	A:	Yes.	
	A.	163.	
71	0.	When was the last shift you worked prior to Tuesday evening's shift?	
72 73	Q:	When was the last shift you worked prior to have any	
73	Α.	Uh, the Monday shift.	
74	A:	On, the Monday Shift.	
75		Got it. All right, and it was the same time frame?	
76	Q:	Got It. All right, and it was the same time frame.	
77		V	
78	A:	Yes.	
79		Do you hold any secondary employment?	
80	Q:	Do you note any secondary employment:	
81		NT.	
82	A:	No.	
83	_	All 1:1 was a secretions when rior to Tuesday's shift?	
84	Q:	Uh, did you work any overtime, uh, prior to Tuesday's shift?	
85			
86	A:	No.	
87	9	vy 1	
88	Q:	Have you taken any medication? In recent times?	
89			04-
90	A:	No.	315

91 92	Q:		Ask it anyways, have you consumed any alcohol in the past 24 hours?
93	٧٠		
94	A:		No.
95	12.		
96	Q:		Do you have any medical conditions?
97			
98	A:		No. Just prior to Tuesday's shift, when was the last time you slept? And how
99			long, and between what hours, if you can recall?
100			
101	A:	×	Okay, it would have been at Tuesday morning, when I got off. Probably went
102			to bed about 3:30 am, and - woke up probably about 9:00 am.
103			s.
104	Q:		Okay. Did you sustain any injuries during the incident
105			2 2
106	A:		I believe I hyperextended my left thumb, my right forearm is still a little
107			swollen, and my left shh I'm sorry, right shoulder - is still sore.
108			
109	Q:		Okay. Do you wear any corrective eye glasses or contact lenses?
110			
111	A:		No.
112			
113	Q:		Now starting at the, uh, front belt buckle, going clockwise, can you describe
114			what duty gear is on your duty belt?
115			- the transfer to the transfer
116	A:		I have a keeper, a flashlight, uh – I believe my gun, another keeper –
117			handcuffs, another keeper, another keeper – um, my – a second flashlight –
118			the, uh, baton. I believe a keeper, then two, uh – my, um, ammo pouch.
119			
120	- Q;		Okay.
121			4 1 1 CC
122	A:		And my handcuff case.
123			01
124	Q:		Okay.
125		-	I dial. I not that on there
126	A:		I think I put that on there.
127	0		Did your duty belt or duty gear sustain any damage?
128	Q:		Did your duty boil of duty gone sustain any comments.
129	۸.		No.
130	A:		NO.
131	0.		What vehicle make and model were you driving during Tuesday's shift?
132	Q:		What volitore make and me are year year.
133	A:		Uh, vehicle 1701, it's black and white marked unit, uh, Crown Victoria.
134	Α.		Oil, 10111010 1701, 100 01
135			246

136 137	Q:	Okay. And what kind of markings and emergency equipment is on this vehicle?
138 139 140 141	A:	Uh, emergency overhead lights, uh, there are, um – markings on the door, the BPD emblems on – the passenger as well as the driver's door. And there's a Berkeley Police printed on the back of the trunk lid.
142 143	Q:	Okay. Do you normally drive this particular vehicle?
144 145	A:	For the last two weeks, yes.
146 147	Q:	Are you a single officer car or a paired officer car?
148 149	A:	Single.
150 151 152 153	Q:	The incident – when we refer to it as the incident, it's regarding, uh, the incident that occurred on, uh, Tuesday, the – February 12, time of report being 2349 hours. Incident location is 2116 Allston Way, apartment 514, in the city
154 155 156	. ~	of Berkeley, and the, uh, involved person of interest is Mr. (Xavier) Moore. Okay, so when I refer to Mr. Moore, I mean Mr. (Xavier) Moore. And he's the person that was – is deceased. Okay?
157		the person that was no destinated the person that was no destinated to the person to the per
158 159	A:	Yes.
160 161 162	Q:	All right, um – you have completed $a - you - a$ preliminary, uh, police report for this incident, is that correct?
163 164	A:	Yes.
165 166	Q:	Okay. And I'm holding it in my hand. It is complete, correct?
167 168	A:	Yes.
169 170 171 172 173	Q:	Okay. Good. All right, so – we're gonna – start talking more in detail about the, um – about what happened before the incident, during the incident, and what happened after the incident. So if you can, uh, tell us, um – um – you heard a radio broadcast regarding a call for service? Is that correct?
174	A:	I was (unintelligible)
175 176 177	Q:	Regarding this incident?
177 178 179	A:	Yes.

INTERVIEW WITH OFC. GWENDOLYN BROWN Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 5

180 181	Q:		Okay. Could you describe that radio broadcast and what information you learned from that broadcast?
182 183	A:		I believe it – it came out as a 415. Between, uh, roommates.
184 185	Q:		Any call details regarding this dispute or 415?
186 187 188 189	A:		Well, I – I check my NDT, um, uh, something (unintelligible) referrin' to the roommate was schizophrenic, off his meds, and had – kicked the roommate out, I believe.
190 191	Q:		Okay. And, uh, this, uh, incident occurred on your beat?
192 193	A:		Yes.
194 195	Q:		Okay. And you responded to this, uh, broadcast or assignment?
196 197	A:		Yes.
198 199 200	Q:	38. A	Do you recall who else was assigned this, uh, uh, broad- who else was assigned this, uh, particular call along with you?
201 202	A:		I believe Officer Smith was assigned as the cover officer.
203 204 205	Q:		Okay.
206 207	A:		And Officer Tu attached himself to the call.
208 209	Q:		All right. So you arrived at the location?
210	A:		Yes.
211 212 213 214 215 216 217 218	Q:		When you first arrived, what were your observations? Initial observations?
	A:	1 2	Uh, the RP, who was supposed to be waiting outside, was not outside.
	Q:		Okay. Um – what did you do – what did you do?
	A:		Well, um, Officer Tu – Officer Tu pulled up right behind me. Um
219 220	Q:		Okay.
221 222 223 224	A:		I punched in the, uh, number, the apartment number, but didn't get, uh, any response. I – contacted, uh, control and asked that they call the RP and have them let us in.
<i>44</i> T			318

INTERVIEW WITH OFC. GWENDOLYN BROWN Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 6

225	0.	Okay. At what point did Officer Smith arrive?
226 227	Q:	Okay. At what point did officer shindragitive.
228	A:	I believe he arrived right after, uh, the RP, Mr. Hayes, who walked up.
229	71.	1001101010101010101010101010101010101010
230	Q:	Okay. So you asked for radio to, uh, recontact Mr. Hayes, as you say?
231	ζ.	
232	A:	Yes.
233		31 X
234	Q:	H-A-Y-E-S, who was the reporting party, and eventually, you made contact
235		with him.
236		
237	A:	Yes.
238		
239	Q:	And was that in the street or in the apartment or in the complex?
240		
241	A:	Right out in front of the complex.
242		
243	Q:	Okay. And so did – do you have a opportunity to speak with Mr. Hayes?
244	_	
245	A:	Yes.
246		
247	Q:	And could you recall what Mr. Hayes told you at that time?
248		
249	A:	Uh, he said that he was the one that called and that, um – his roommate had
250		kicked him out, and that he was schizophrenic, off his meds, and he needed to
251		be, uh, 5150.
252		
253	Q:	Did Mr. Hayes use that term, 5150?
254		
255	A:	Yes.
256		
257	Q:	Got it. Okay. Anything - any further information that - you can recall? That
258		he told you?
259		
260	A:	That – well, I asked why did he, um, kick him out? First I asked was he, uh, a
261		tenant there.
262		•
263	Q:	Mm-hm.
264		1 1 0 11 4 11
265	A:	And he said he was, I asked was his name on the lease? He said yes. And I
266		said, "Well, why would your roommate kick you out?" He says, "Well, he's
267		been drinking and doing drugs all day. And he wanted money to get more
268		drugs and I told him I didn't have any money, and we argued, and he told me
269	2	to get out."
		0.44

270		
	0.	Got it. So eventually, um, uh, he led you to the apartment? Mr. Hayes?
271	Q:	Got it. 50 ovoltamily, and may me and years
272		X7
273	A :	Yes.
274		1
275	Q:	Okay. And you went up to the apartment on the stairs or the elevator?
276		
277	A:	Elevator.
278		
279	Q:	Okay. And it was apartment 514, correct?
280	Q.	1
	۸.	Yes.
281	A:	165.
282		Ol Commendate of and you Officer Smith and Officer who Tu lih Tu
283	Q:	Okay. So, um – and the f- and you, Officer Smith, and Officer, uh, Tu, uh, Tu
284		is T-U, uh, you guys went up together?
285		
286	A:	Yes.
287		
288	Q:	Okay. So when you reached the apartment, was the door open or door closed?
289	ζ.	
290	A:	Closed.
	Λ.	Clobodi
291	0	Okay. Um, could you describe the - your surroundings just outside the
292	Q:	
293		apartment? Briefly?
294		1
295	A:	Uh, this is a large, um, multi-apartment complex. Um, we were on the fifth
296		floor. And it – it's sorta designed in – like a rectangle shape, and there's a
297		banister all the way around the, um, the floor. And the apartments are -
298		there's a – I guess average walkway around the entire, uh, square or rectangle
299		with, um, banisters. Um, there's an open – plaza-like area at the – the bottom.
300		That's about
301		
	0.	Okay. And is the, uh, door to apartment 514 more on which, uh, side of the
302	Q:	building? North, east, west, or south?
303		building: North, east, west, or south.
304		26 1 1
305	A:	More on the north.
306		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
307	Q:	North side. Okay. So you reached the apartment door, again, I'm sorry, was
308		the door closed or open?
309		
310	A:	Closed.
311		
	0.	Okay. So what happened – immediately when you arrived at the door?
312	Q:	Only. So many impression
313		320

INTERVIEW WITH OFC. GWENDOLYN BROWN

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314 315	A:	We, uh, um, I asked, uh, Mr. Hayes did he have the keys? He said he did. He unlocked the, uh, door, opened it, and I asked him to step to the side. And at
316		that point, I called in to, uh, Mr. (Xavier).
317 318	Q:	Okay. So, uh, Mr. Hayes unlocked the door and he opened it for you
319 320	A:	Mm-hm.
321 322	Q:	and through the open door, you called out to Mr. Moore. (Xavier) Moore.
323 324 325	A:	Yes.
326 327	Q:	Were – at – were you able to see him when the door immediately opened? Or he was – not visible?
328 329 330	A:	He was not visible.
331 332	Q:	Okay. When you say you called out, what did you say? Uh, if you can recall?
333 334	A:	I – I believe I said, um, "(Xavier)?" And this person came to the door and opened it.
335 336	Q:	Okay. Uh – now could you describe (Xavier) for me.
337 338 339 340 341 342	A:_	Was, $uh - I$ – initially thought it was not (Xavier), because I was expecting to see a man. Uh, this was a fair-skinned, uh , probably about five – seven, five eight, heavy-set woman, or looked to be a woman, had, uh , gray extensions all the way down the back. Was in a, uh , sort of like a tube top animal print and a wrap-around skirt that was also animal print.
343 344 345	Q:	Mm-hm. Okay. Um – did he have make-up on or anything?
346 347	A:	I don't recall any make-up.
348 349	Q:	Did he have shoes on? Do you recall?
350 351	A:	I don't believe he had shoes on.
352 353 354	Q:	Okay. And when he – from now he's met you at the door. You said that he opened the door a little bit further?
355 356	A:	Yes.
357 358	Q:	Okay. Um – okay, now what kind of conversation did you have with him?

359	A:		I told him we were there because his roommate called and said he was thrown
360	11.		out, and I said "You wanna tell me what's going on?" And he's standing at
361			the door and he started talking about things about the FBI and, un, ne didn't
362			feel safe, and – and I was, "Well, why don't you feel safe?" "Well, you – you
363			know how the FBI is, and they're – they're following me." And then he – he
364			start callin' me different names, like Gail and Carol and it was one other name,
365			I believe Wanda, and – I told him I wasn't – either of those people, and he was
366			sayin', "Well, I see them right behind you." And then he started talkin' about
367			dinosaurs – so – I kept tryin' to bring him back to the conversation as to why,
368			um, we were there, and – and I said, "Why – why – why would you kick your roommate out?" "Oh, he's fin' stupid," and I think he – at one point – or he –
369			at one point called him Crunchy. And said, "Okay, Crunchy, are you gonna
370			at one point called him Crunchy. And said, "Okay, Crunchy, are you get act right?" And, and I said, "Who's Crunchy?" And he pointed over to Mr.
371			act right?" And, and I said, "Who's Crunchy? And he pointed a very
372			Hayes. And then he started talkin' about the FBI again. And
373			Okay. So – uh, if I my interject, so Mr. Moore, who's at the door, is talkin'
374	Q:		Okay. So – un, if I my interject, so wit. Woord, who is at the cost, about the FBI, not feeling safe, being followed, calling you different names as
375			about the FBI, not leering sale, being followed, earning you
376	6		though he recognizes you
377		103	Mary home
378	A:		Mm-hm.
379			dinosaurs, et cetera. Was – while he was saying these things to you, and
380	Q:		while while you were tryin' to bring him back on track, was ne at that point
381			calm? Or was he animated, was he agitated, can you describe his demeanor?
382		κ.	
383			Very, um, theatrical? Because he had his hands in the doorway, kinda like
384	A:		this, and he's – he's just like – kept doing like this, and – you know
385			tins, and ness the system of
386	0.		Sauntering? I don't know, explain this.
387	Q:		buditeinig. 1
388 389	A:		Pretty much, you know, and
390	A.		11000, 2000, 7,5
391	Q:		Okay. Yeah.
392	۷٠		
393	A:		kept throwing his braids back and
394	121		
395	Q:		Okay. Theatrical. Okay, okay. And he was able to see Mr. Hayes, 'cause he
396			called him Crunchy, um
397			
398	A:		Yes.
399			and a second sec
400	Q:		Okay. All right. So the conversation continues in this fashion?
401			
402	A:		Yes.
403			
			277

404	Q:	Okay. What is Officer Tu and Officer Smith doing at this point?
405 406 407 408 409 410 411 412 413	A:	Officer Tu is standing, um – standing by, um, Officer Smith is – taking down Mr. Hayes' information and pointing him – um – at – at one point, he informed me that he had an outstanding warrant. I believe it was \$5,000. And asked if I wanted it confirmed, and I said yes. And he said it will probably take a little while, because it was a manual warrant, and San Francisco would have to – activate it manually, something to that effect. So once it was confirmed, you know, I told him, "Okay, you can take him down – on down to the station."
414 415 416	Q:	Okay. So you're talkin' about Officer – Officer (Brandon) Smith, who ran a reference check using his police radio, is that correct?
417 418 419	A:	Yes.
420 421	Q:	And on Mr. Hayes?
422 423	A:	Yes.
124 425 426	Q:	Okay. Uh – uh, and – and Officer Smith found that Mr. Hayes had a \$5,000 warrant and that eventually it got confirmed, and you instructed Officer Smith that you wanted Mr. Hayes arrested for the warrant? Is that correct?
427 428	A:	Yes.
429 430 431	Q:	Okay. Um – and, uh, did Officer Smith run any inquiries on Mr. Moore at this point? Or
432	A:	He actually, um, did a check – prior to going upstairs.
433 434	Α.	
435 436	Q:	Mmm.
437 438 439 440 441 442 443 444	A:	Uh, he went back to his car. When – when Mr. Smith – I'm sorry. Officer Smith arrived, he asked, um, what was the name of the person we were going to contact, he said, "Is his name (Xavier) s- (Xavier) Moore?" And I said, "Yes." He said, "Well, he has a \$10,000 warrant out of San Francisco." I said, "Well, this particular individual just moved from San Francisco." And he said, "Let me go back to my car, just to make sure." He went back to the car, did something on the NDT, he came back, and we just – we all went upstairs.
445 146 447 448	Q:	Okay. At this point, in your mindset, while you're on the landing with Mr. Moore, you're thinking this gentleman, Mr. Moore, has the warrant for his arrest.

449		
450	A:	Yes.
451		
452	Q:	Is that your mindset? Okay. Um, so after, uh, Mr. Hayes' warrant was
453		confirmed, did – uh, did Mr. – did Officer Smith leave with Hayes?
454		
455	A:	Yes.
456	11.	• • • • • • • • • • • • • • • • • • •
457	0.	Okay. And while Officer Smith left with Hayes down the elevator out the
458	Q:	building, you were still on the landing speaking with Mr. Moore along with
		Officer (Ken) Tu. Correct?
459		Officer (Refi) Fu. Consect.
460	A .	Von
461	A :	Yes.
462		Okay. So now Officer Smith is now gone with Mr. Hayes, now can you - can
463	Q:	Okay. So now Officer Similia is now gone with vir. Hayes, now can you can
464		you now tell us the story about – tell us exactly what's now happening from
465		there – that point forward?
466		un to the second of the base of the b
467	A:	Uh, I'm still tacking with Mr. Moore, and – he's – he's becoming a little more
468		theatrical, and talking about the FBI, and continuing to call me other names
469		n a
470	Q:	Mm-hm.
471		
472	A:	of other people.
473		
474	Q:	Mm-hm.
475		
476	A:	And I – at that point, I – looked at Officer Tu to let him know, um – we're
477		going to take this person in. You know, and, um – so he moved over to him,
478		and I said, "Well, Mr. Moore, you have a warrant, and we need to go take care
479		of this." And he says, "No, I don't have a warrant." And, uh, I said, "Well,
480		yeah, you do, and we need to go down to the station and get it cleared up, and
481		-" "Well, I need to go inside and call the FBI to get this cleared up.
482		
483	Q:	Hmm.
484	Q.	
	A:	I said, "Well, you can use the phone down at the station, but we need to go -
485	A.	we need to take care of this." And he was like, "No, I'm gonna use the phone
486		here." And I said, "We really need to go, and – and let's go on down and just
487		get this cleared up." And at that point, I looked at Officer Tu, and he took,
488		um, one of Mr. Moore's hands, and I took the other, and he just – exploded.
489		Start – grabbed his hands back like this, and – I believe Officer Tu had two
490		hands on him.
491		Hands on min.
492	0	Mare have
493	Q:	Mm-hm.

494	۸.	And I had one hand, and he literally just pulled us forward. And we both still
495	A:	hangin' on, and he literally drug us into the apartment, and we fell on a
496 497		mattress that was on the floor.
497		
498	0:	Mm-hm.
499	Q:	
500 501	A:	And we're still trying to – to, um, restrain him. I was able to get my cuffs out,
502	Α.	1 Officer Tu had one hand and I was able to get one cuit on min, out, unit,
503		Manus busied his second arm in under film, and we're strugging
504		his arm and telling him "Stop resisting, stop resisting. At this
505		
506		1 d and a contleman sitting in a chair. Just sitting there, looking out
507		the state of the s
508		tit for officer cafety reasons SO - he complied, he got right up and
509		draphed my mic and I called for additional difference
510		t 1d description and - I called again. Code times cover, code
511		and ditional units " And other officers responded, and they helped
512		us get, um, Mr. Moore in cuffs, and – because of his large size, we clid up
513		using two sets of cuffs.
514	75	
515	Q:	Mmm.
516		got his orm free and then he
517	A:	And – prior to that, um, we were trying to get – get his arm free, and then he
518		And – prior to that, um, we were trying to got and any more." goes, "Okay, okay," like, "Okay, I'm – I'm – I'm not going to resist any more."
519		And we're able to get the cuffs on him. But he continued kicking and bulking.
520		Kicking and – so we request a wrap.
521		
522	Q:	Okay.
523		The Diviliance come
524	A:	And I believe Sergeant Phillips came
525		a the moint?
526	Q:	Can I interrupt at this point?
527		
528	A:	Mm-hm.
529		Before we're gonna leave off him. Just backtrack a little to get a little bit more
530	Q:	
531		detail.
532		Olver
533	A:	Okay.
534	_	So you informed Mr. Moore that he had a warrant, that he needed to go. It's
535	Q:	clear that you were telling Mr. Moore that he was under arrest?
536		Cical tilat you were coming
537		Yes.
538	A:	325

539		Okay. And Mr m- to your - to your, uh, recollection, Mr. Moore
540	Q:	understood that you were intending on arresting him, is that correct?
541		understood that you were intending on arresting him, is that someon
542		T/
543	A:	Yes.
544		at the state of th
545	Q:	Okay. And when he wasn't complying, when you were tryin' to, uh, use
546		verbal judo and get him to comply, he wasn't complying, he wanted to step
547		inside and call the FBI and clear this up. But eventually you felt necessary
548		that you guys had to take a hold of Mr. Moore, is that correct?
549		
550	A:	Yes.
551		11 : 1. G orid Officer (Van) Tu took one arm and while you
552	Q:	All right. So you – you said Officer (Ken) Tu took one arm and while you
553		took the – while you took the other. Do you recall which arm you took?
554		t at the sector would have been his right
555	A:	I was on the side, so it would have been his right.
556		And Officer Try took his left
557	Q:	His right. Okay. And Officer Tu took his left:
558		9
559	A:	Yes.
560		And then you – earlier, you motioned where when once, uh, you both of you
561	Q:	got took a hold of Mr. Moore's arms, he basically flung in a upward motion,
562		and while you were – had grasp of his arms, that pulled both you and (Ken) –
563		and while you were – nad grasp of his arms, that puried both you and (rech)
564		Officer Tu towards his direction, inward towards the apartment. Is that
565		correct?
566		*
567	A:	Yes.
568		of the state and did rum did he try to turn and run inside?
569	Q:	Okay. And so – he did so, and – did, um, did he try to turn and run inside? Or did he drag you and Officer (Ken) Tu in as he was going backwards into
570		
571		the apartment?
572		Initially, um, we're going backwards into the apartment, and I believe he
573	A:	Initially, um, we're going backwards into the apartment, and I series to
574 –		started to turn sideways, and at that point we fell.
575	_	
576	Q:	Okay.
577		A 1' and the methods
578	A:	And it was onto the mattress.
579	_	Okay. Could you describe this mattress to the best of your recollection?
580	Q:	Okay. Could you describe this mattress to the best of your reconcertor.
581		The same who mattered that was on the floor
582	A:	It was a twin-size, uh, mattress that was on the floor.
583		

584	Q:	Okay. Though – was there – bed's – bed, uh, frame or anything like that?
585		
586	A:	No.
587		
588	Q:	Okay. So when you said you fell, so Mr. Moore, did he fall on his back, or
589		did he fall on his – on his front?
590		
591	A:	He fell more on his stomach, partially sideways.
592	11.	•
593	0:	Oh, okay. All right. What
	Q:	On, Okty. Thi light. William
594	1	Because I was on this side of him.
595	A:	Because I was on this side of min.
596		1 1'. 1. G -: 1- Verylan degoribing
597	Q:	You were on the – now his left side. You're describing.
598		and the second s
599	A:	No, I'm still on the right side of him.
600		
601	Q:	So he's falling on his stomach
602		G G
603	A:	This way.
504	11.	
605	0.	onto the mattress.
	Q:	Onto the mattress.
606	A .	Mm hm
607	A:	Mm-hm.
608	_	N. M. M. and might oide
609	Q:	Now you're on Mr. Moore's right side.
610		1 I was with the the deer
611	A:	I'm still on the same side I was on on – when I was outside the – the door.
612	•	
613	Q:	Got it. Okay. Got it. Uh, so you fell. Was his entire body fell on the
614		mattress? Or just his, uh, maybe from waist high? Can you - can you -
615		make
616		
617	A:	No, his entire body
618	<i>D</i> .	110, 1110 0111110 00-5,
	O1 2	His entire body – fell.
619	Q:	This chine body when.
620		Lin antino hadre fall on the mattress
621	A:	his entire body fell on the mattress.
622		2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
623	Q:	So you fellalong with him?
624		
625	A:	Mm-hm.
526		
627	Q:	And you're on his right side.
:		-

629	A:	Right.
630		Did to the de way do you ramamber if Officer (Ken) Tu also fell
631	Q:	Did and – did you – do you – do you remember if Officer (Ken) Tu also fell
632		along with the – with you? Before?
633		
634	A:	He was $-$ we all went down.
635		
636	Q:	You all went down.
637		
638	A:	Onto the mattress.
639		
640	Q:	Okay. Got it. All right. Um – and now you are – you're – and then your
641	ν.	struggle is – you – you and Officer (Ken) Tu trying to handcuff Mr. Moore?
642		Is that correct?
643		
644	A:	Still trying to, uh, restrain him to get the cuffs on.
	Α.	Julia de la companya
645	0.	Got it. And - you said at one point there was one handcuff that was
646	Q:	successfully laced on Mr. Moore's wrist.
647		successfully faced on Mr. Moore's Wilst.
648		T
549	A:	Yes.
650		1 1 1 1
651	Q:	Do you remember which wrist that was?
652		
653	A:	I believe it was the right one.
654		
655	Q:	Right one. Was it you, then? That was able to to put the cuff on him?
656		
657	A:	Yes.
658		
659	Q:	Got it. And then but you said that the other hand was buried under his - his,
660	٧.	uh – his chest while Mr. Moore was on top of the, uh, mattress. Is that
661		correct?
662		
	۸.	Yes.
663	A:	105.
664	0	And what was Officer Tu doing at this point?
665	Q:	Alla what was officer to doing as the p
666		He's still holding at - the hand with the handcuff on it. Because he's still -
667	A:	he's still violently resisting. He's kicking, he's balking
668		he's still violently lesisting. The s kicking, he s outking
669		ot a 11 to Maning
670	Q:	Okay. Um – balking. Meaning
571		I I
672	\mathbf{A} :	Up and back. Um - pretty much I guess you would say flinching his back up
673		and back, up and back.

674	0.	All right.
675 676	Q:	In right.
677 678	A:	Or up and down, up and down, because Officer Tu was partially straddled him, and he's just – balking like a horse.
679 680 681 682	Q:	Okay. Okay. Got it. And is Officer Tu, what was his positioning? Was he like, uh, uh, Officer Tu, was he using his weight to try to control Mr. – Mr., uh, Moore?
683 684	A:	I would – I would have to speculate that that's what he was doing.
685 686 687	Q:	Okay. All right. So he's – okay. $Um - and$, uh , Officer Tu, to your knowledge, he's – he's, uh , over six foot would you say, correct?
688 689	A:	Yes.
690 691	Q:	And Officer Tu is over 200 pounds, would you say?
692 693	A:	Yes.
594 695	Q:	Okay. And would you consider Officer Tu a strong person?
696 697	A:	Yes.
698 699 700 701 702	Q:	Okay and you're saying to your – at the time, when only you and Officer Tu were there, were you and Officer Tu, and who – Officer Tu is a l- rather large and strong officer, were you have – were you – the two of you having a difficult time controlling Mr. Moore?
703		77 1200 onld
704	A:	Very difficult.
705 706 707	Q:	Okay. Got it. $Um - so - at - s$ - at a certain point, you decided you needed more assistance. Is that correct?
708 709	A:	Correct.
710 711	Q:	Okay. So you used your radio?
712 713	A:	Yes.
714 715 716	Q:	To, uh, ask for additional help? The first radio brad- broadcast you made for help, what did you – do you recall what you said on the radio?
717 718	A:	Uh – uh, send additional officers.

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719 Okay. All right. Um - and after you made the radio broadcast, you went back 720 Q: to the - trying to restrain Mr. ... 721 722 I − I still had a hand on him. 723 A: 724 Okay. All right. 725 0: 726 When – even when I made the radio – call. 727 A: 728 Okay. Okay. Um - would you say, uh, Mr. Moore was, uh, kicking you, uh, 729 Q: or Officer Tu at all at that point? Or... 730 731 He was kicking - he was not kicking me, because I was closer up, um, 732 A: towards his shoulder area. 733 734 Okay. 735 Q: 736 But I could see him kicking. 737 A: 738 Okay. All right. Did you at any point, were you at all - putting your, uh, 739 Q: body weight on his l- uh, on his neck or on his chest area during this trouble? 740 741 I probably was putting my weight on - on his - his shoulder blades. 742 A: 743 Shoulder blades. But not directly on his chest or directly on his neck or his 744 Q: head. Correct? 745 746 No. 747 A: 748 Okay. Um, and, um - well, you're - the struggle continues, and - at - did 749 Q: additional officers arrive? 750 751 Yes. 752 A: 753 Okay. Do you remember which officer entered first to assist you and Officer 754 Q: Tu? 755 756 I don't remember which one. 757 A: 758 Got it. And adish- and - um - thereafter, at the time that you, Officer Tu, and 759 Q: the additional officers were able to successfully handcuff Mr. Moore, about 760 how many officers were there at that time when the successful handcuffing

761

762 763

took place?

764	A:	I think probably – two? Possibly three.
765		or a set of five at that point?
766	Q:	Okay. So a total of five at that point?
-767		V
768	A:	Yes.
769	_	Okay. Do you remember who they were? At
770	Q:	Okay. Do you temember who they were same
771		Um – Officer Mathis?
772	A:	OIII - Officer Mannis.
773	0	Olcov
774	Q:	Okay.
775		Officer Gardner – and I don't remember who the other person was.
776	A:	Officer Gardier and radii remains
777	0	Okay.
778	Q:	Okay.
779		At that $-$ at that time.
780	A:	
781	0	All right. And so you said that you were – that you were able to take two
782	Q:	handcuff sets, link them together, and do a double set, uh, handcuffing of Mr.
783		Moore, correct?
784		Moore, correct:
785		Yes.
786	A:	
787	0	Okay. So, um - Mr. Moore's handcuffed. All right? Now - is he continuing
788	Q:	to resist?
789		(0 10515):
790		Yes.
791	A:	
792	0	Okay. Do you know if there were any other restraint - uh, restraint attempts
793	Q:	being made by any other officers on Mr. Moore?
794		being made by any states
795	۸.	Uh, just trying to hold him down.
796	A:	On, Just 11/11-B
797	0.	Just hold him down.
798	Q:	Just Hold Hill Down
799	A:	Mm-hm.
800	Α.	
801	0.0	Okay. And, um - during - as you describe, uh, uh, uh - trying to keep - or
802 803	Q:	talding Mr. Moore down did you witness any other officers, un, use then
803		on on Mr. Moore's chest or neck or head area or stolliach
804		area to holding him down? Putting their knees on certain areas of ivin., uni,
803 806		Moore at all? Did you witness any of that?
807		8
808	A :	No.
000	Λ	331

809		What did – apartment – what were the (unintelligible) using to hold Mr.
810	Q:	Moore down? The
811		Moore down? The
812		
813	A:	Their hands.
814	61	1 11' - wine arily what parts of Mr
815	Q:	Their hands. Okay. And they were holding primarily what parts of Mr.
816		Moore's body?
817		to the first of th
818	A:	I believe Officer Tu was still straddled him, and I don't know which officers,
	Λ.	but someone was holding his legs.
819		out bomeout was a second of the second of th
820	0	Okay. All right, somebody was trying to
821	Q:	Okay. All light, someoody was 127-1-8
822		m : 4 1-14 his loop down
823	A:	Trying to hold his legs down.
824		11-1
825	Q:	keep – keep his legs down.
826		
827	A:	To keep from kicking.
828	11.	
	0.	Okay.
329	Q:	
830		And I was still trying to – hold him, just hold onto him, because he – he was
831	A:	All I hadring pretty wildly
832		still bucking pretty wildly.
833		Okay. All right. Um - do you know if the legs were restrained in any
834	Q:	Okay. All right. Um – do you know it the logs were resulting
835		manner? Do you recall?
836		1 21
837	A:	Not until, um – the sergeant arrived with a wrap.
838		
839	Q:	Okay.
840	Q.	
	- A .	And they were able to use the strap, the ankle strap
841	A:	1 Hid May
842	0	Olcov
843	Q:	Okay.
844		to restrain his, um – his ankles.
845	A:	to restrain its, uin – ins ankies.
846		Okay. So you saw that his ank- Mr. Moore's ankles eventually was - you -
847	Q:	Okay. So you saw that his ank- Wir. Woole's ankles eventually you saw that the strap
848		the strap of the wrap device, uh, you saw eventually, you saw that the strap
849		was successfully placed on the – h- Mr. Moore's ankles. Is that correct?
850		
351	A:	Yes
	л.	
852		222

853 854	Q:	Okay. Now – um – do you remember which sergeant brought up this wrap device?
855		do neo.
856	A:	I believe it was Sergeant Phillips.
857	7	
858	Q:	Okay. All right. Uh – so now Mr. Moore's hands are successfully handcuffs,
859	ζ,	his legs or his ankles are successfully restrained in the strap. Is Mr. Moore
860		still struggling? Or continuing to resist?
861		5 5
862	A:	Yes.
863	11.	
864	Q:	Okay. During – the f- the time that this – your – the struggle with Mr. Moore,
865	Q.	the time that Mr. Moore was, uh, resisting to the time that, uh, he was
866		handcuffed and his legs were restrained, was Mr. Moore yelling anything,
		screaming, uh, was – what was he saying anything at that period of time?
867		Scientifing, un, was what was no saying any and processing as
868	4 .	There was one - one point - at one point, he said, "Okay." Like he
869	A:	was going to stop, um, resisting.
870		was going to stop, unit, resisting.
871		Okay. But during that, um - well, let me ask you - if you can recall. From
872	Q:	Okay. But during that, uni – wen, let life ask you – if you can recail. From
373		the time that the doorway, when you and Officer Tu first tried to take a hold
874		of Mr. Moore and he, uh, backed into the apartment and the struggle began to
875		the point where other officers arrived and assisted and you – and the officers
876		and yourself were successful in handcuffing Mr. Moore and restraining his
877		legs, uh, how long do you think that period of time was? To the best of your
878		estimation?
879		
880	A:	I - no. It – it seemed like forever.
881		
882	Q:	Mm-hm.
883		
884	A:	Uh, I honestly couldn't tell.
885		
886	Q:	Okay.
887		
888	A:	I honestly couldn't.
889		
890	Q:	K- you can't give an estimation in minutes or seconds?
891		
892	A:	It just seemed like it took forever.
893		, and the second
894	Q:	Okay. Um, during that period of time
395	Κ.	,
896	A:	Mm-hm.
897	124	
071		333

898 899	Q:		was Mr. Moore yelling?
900	A:		I don't recall him yelling.
901	Λ.		Tuon treean min yemig.
902 903	Q:		Okay. Was he – using, uh – was he tellin' you – you and other officers anything? Was he verbalizing anything?
904			
905	A:		I don't recall – only the – thing I remember him saying was, "Okay."
906			
907	Q:		Okay. All right. And when he – when he said, "Okay, okay," did he actually
908			stop?
909			
910	A:		He slowed down
911		i÷.	
912	Q:		Mm-hm.
913			
914	A:		just enough for us to – when we were pulling his arm out, he said, "Okay,
915 🖛			okay." And so he kind of relaxed a little.
916			
917	Q:		Uh-huh.
918			·
919	A:		And then it was on again.
920			*
921	Q:		On again. Okay. What – did you – during the period from – again, the
922			doorway to the time that he was handcuffed, during that struggle when you
923			(unintelligible) period, did you – did you yourself and or hear other officers
924			give verbal commands to Mr. Moore? And if so, what were those commands?
925			
926	A:		I know Officer Tu kept telling him, "Stop resisting, stop resisting." We both
927			did.
928			
929	Q:		Okay. Um – do you recall any other officers saying anything to the best of
930	Ψ.		your recollection?
931			J
932	A:		I - I - don't recall.
933	11.		
934	Q:		"Stop resisting," was – you heard, "Stop resisting." And
935	ζ.		Stop resisting, was you make, stop seems.
936	A:		Mm-hm.
937	11.		ATABAR ARRAN
938	Q:		you said it was (unintelligible).
939	ζ.		jou sura it mus (aiiiiteiiigisis).
940	A:		Yes
941	1 k.		
7 1 1			

942 943 944	Q:	Okay. All right. During that period from the doorway to the time that you were – were able to successfully handcuff Mr. Moore, did Mr. Moore at all verbalize to you that he was having trouble breathing?
945 946 947	A:	No.
947 948 949	Q:	Did he ever at all tell you that he need – that he was hurtin' in in any way?
950 951	A:	No.
952 953 954	Q:	Did he ever say that he needed ambulance because he was physically, uh, injured in any way?
955 956	A:	No.
957 958 959	Q:	Okay. $Um - um - so$. Now he is handcuffed, and his legs are restrained. Uh, at $-$ at a certain point, does he $-$ stop resisting?
960 961	A:	Yes.
962 963	Q:	Okay. Describe how that came about.
964 965 966	A:	Once, uh, his legs were restrained, he – resisted for a while. And then he just stopped. Kinda like – like he was going to take a rest.
967 968	Q:	Okay.
969 970	A:	And I am – I s- just – kept watching him.
971 972 973	Q:	Okay. When, uh, when he took his rest, as you said – as you put it, how was he resting? His body position?
974 975 976	A:	He was partially on his side, um, and partially more – like – halfway on his stomach? Halfway on his side.
977 978	Q:	Okay. All right. So – you – he wasn't completely on his stomach or face or
979 980	A:	No.
981 982 983	Q:	Okay. He wasn't completely on his back. He was essentially more so on his side. Do you remember left side, right side? Do you recall?
985 985	A:	It would have to be – it would have been the left side.

986 987	Q:	Left side? Okay. And so there's a – time when he's takin' a rest. Okay. And what happens during this rest period? What happens next?
988		
989	A:	I'm watching him, and – I don't see his chest moving. So I said, "I don't think
	7 1.	he's breathing." And so we pulled him over completely on his side. And I
990		
991		could see his chest start – starting to move.
992		
993	Q:	Okay.
994		
995	A:	And I say, "Okay, he's breathing." And I checked pulse. And he had a pulse.
996	1 2.	
	0.	Okay.
997	Q:	Okay.
998		** 111 1 1 101 11 111
999	A:	He moved his head a little, like this, and
1000		
1001	Q:	So he shrugged his shoulders, shook his head a little bit as you
1002		
1003	A:	He – he moved his head, I remember.
	Α.	The me mo red me mount, I remain to
1004		(mintalliailala) All might
1005	Q:	(unintelligible). All right.
ე06		
1007	A:	And
1008		
1009	Q:	Were his eyes open? I'm sorry. Do you recall?
1010	ζ.	
1011	A:	I don't recall.
	A.	1 don't room.
1012	0	Okay. Was he - w- chest is going - chest is moving was indicated for - to
1013	Q:	
1014		you as what?
1015		
1016	A:	He's breathing.
1017		
1018	Q:	He's breathing. Okay. All right, so – you saw that, you move him on his side.
1019	⋖.	, , , , , , , , , , , , , , , , , , , ,
	۸.	Mm-hm.
1020	A:	MIII-IIII.
1021	_	0 1 1 1 10
1022	Q:	So what happens next?
1023		
1024	A:	At that point, I just kept watching his chest.
1025		
1026	Q:	Okay.
1020	۷٠	
	۸.	And it was probably about - probably about a minute, 'cause it was a short
928	A:	time there after – I notice his chest wasn't moving anymore. And I said, "I
1029		
1030		don't think he's breathing."

1031_{-}			
1032	Q:		Okay.
1033			
1034	A:		And I checked for a pulse, I said, "I can't get a pulse, I can't get a pulse," and -
1035			they were like, "Let's get the cuffs off him, get the cuffs off him." We
1036			immediately took the cuffs off and – pulled him over on his back
1037			•
1038	Q:		Mm-hm.
1039	ζ.		
1040	A:		but the mattress was so soft, we pulled him onto the floor
1040	TI.		Out all limited and a limit and a
1041	Q:		Right.
	Q.		rugiii.
1043	۸.		to start CPR. And, uh, called for code three cover - I mean code - code
1044	A:		three for BFD.
1045			unee for BrD.
1046	^		Mar has
1047	Q:		Mm-hm.
1048			Decree and actually called for DED carlier because we wanted um - the
1049	A:		Because we'd actually called for BFD earlier, because we wanted, um – the
1050			wrap wasn't large enough
051			
1052	Q:		Mm-hm.
1053			
1054	A:		to restrain him, and we needed restraints. And, um - I believe it was
1055			Sergeant (Amber) who got on the radio and said, "Get him here code three."
1056			'Cause I – I – I yelled out, "Code three, code three, he's not
1057			breathing, code three."
1058			
1059	Q:		Mm-hm.
1060			
1061	A:		And I heard her on the radio. Um
1062			
1063	Q:		Making the request for code three
1064			
1065	A:		Mm-hm.
1066	11.		
1067	Q:		Berkeley fire paramedics.
1068	ζ.		Doznoso, sara para
1069	A:		Right.
	A.		rugin.
1070	0.	191	Okay. Got it. All right. And so now Mr. Moore's on his back. Who's -
1071	Q:		who's givin' the chest compressions, do you recall?
1072		<i>i</i> 0	who s givin the onest compressions, to you room.
973	A		Lib Officer Tu
1074	A:		Uh, Officer Tu.
1075			337

1076 1077	Q:		Officer Tu? Okay. Um, and what were – what were you doing at that point?
1078 1079	A:		At this point, I – I held his head to open up his airway.
1080 1081	Q:		Okay.
1082 1083	A:		And I said, "Someone run downstairs, get a mask, get a mask. "And they said, "B – BFD's here."
1084 1085	·Q:		I see.
1086 1087 1088	A:		And then, um
1088 1089 1090	Q:		Mask meaning the – the breathing safety apparatus thing.
1091 1092	A:		Right.
1093 1094 1095 096 1097	Q:	ž.	Right. Okay. All right. So $-um - uh - at$ this point in juncture, while the, uh, CPR is $-$ is being, uh, done on Mr. Moore, uh, to the best of your recollection, do you recall who the other officers other than you and Officer Tu and Officer Phillips, uh, do you know who else was in the room during that period time still?
1098 1099 1100	A:	6	I think it's Sergeant Phillips.
1101 1102	Q:		I'm sorry. Sergeant Phillips.
1103 1104	A:		Officer Mathis
1105 1106	Q:	15	Okay.
1107 1108	A:		and I believe Officer Gardner.
1109 1110	Q:		Okay.
1111 1112	A:		And I don't remember who else.
1113 1114	Q:		Do you – do you recall any other, uh, supervisor or sergeant rank there in the room?
1115 1116 1117 118	A:		Uh, at one point, I know of, uh, Sergeant (Cardoza) was there, but I don't know if he was there doing the – CPR or not.

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1119 1120	Q;	Okay. So – you're tending to the, uh, Mr. Moore's, uh, airway, uh, Officer Tu is doing the chest compressions. Eventually fire department paramedics
		arrive, correct?
1121		arrive, correct:
1122	A treat	Var
1123	A:	Yes.
1124		
1125	Q:	Okay. And – if I may just speak on your behalf, they're loading him up on the
1126		gurney, and they take him away.
1127		
1128	A:	Uh, they started – uh – they took over the chest compressions and
1129		administered oxygen. And they – they continued doing that, and, uh – they
1130		moved around the mattress and the bedding to get the gurney in there
1131		
1132	Q:	Got it. Okay.
1133	ζ.	
1134	A:	and, um, got him onto the gurney and took him on out.
1135	rx.	and, and, bot min oute the Barney and to be seen and
	0.	Okay. And once the fire paramedics and Mr. Moore have now exited the
1136	Q:	apartment, what's happening now?
1137		aparunent, what's nappening now:
1138		III I II I'. Itali the expected the "IWe wood to get on ID took up
139	A:	Uh, I – I believe I told – the sergeant, uh, "We need to get an I.D. tech up
1140		here."
1141		
1142	Q:	Mm-hm.
1143		
1144	A:	Um – I believe Sergeant (Cardoza) started – assigning officers to do, um,
1145		contact the – the neighbors, someone was assigned to contact, um – Mr.
1146		Sterling, that's the individual who was in the apartment
1147		
1148	Q:	Okay.
1149		
1150	A:	initially. And I do know Officer Smith, he ran back upstairs. When I called
1151		for cover.
1152		
1153	Q:	Okay.
1154	Q.	Oray.
	A:	He was there also.
1155	A.	The was there also.
1156	0.	Officer Mr Smith Okov
1157	Q:	Officer – Mr. Smith. Okay.
1158		***
1159	A:	Uh
1160		
161	Q:	'Cause he was there early on, (unintelligible)
1162		
1163	A:	Yes.
		3.

1164		
1165	Q:	Okay. All right. Um – and then, uh, while all of the other officers gettin'
1166		tasked with assignments, uh, um, what were you doing before you actually
1167		had left the property and went back to the station? What was your role at that
1168		point?
1169		
1170	A:	I was talking with Sergeant, uh, Phillips and Sergeant (Cardoza), because, uh
1171	11.	- she stated someone needed to - follow the ambulance. Uh, to the hospital.
1172		production and the second seco
1172	Q:	Mm-hm.
1173	Q.	174111 11111.
1174	A:	And, um – Officer Tu volunteered to go, and she's she's really concerned
	A.	about his, um, well-being, because – he was s- um – sweating, seemed to be
1176		
1177		out of breath, 'cause he had been doing the chest compressions
1178	0	No. 1
1179	Q:	Mm-hm.
1180		1 *
1181	A:	and I notice he – he kinda limped a little bit, knowing that he had back
1182		surgery
1183		\$ 30
184	Q:	Yeah.
1185		
1186	A:	and I ask him, I said, "(Ken), are you sure you're okay?" And at that point,
1187		she said, "We should get another officer, um, to f- to go," and I – and I believe
1188		Sergeant (Cardoza) said, "Either one of you guys go." You know, and I said,
1189		"I'm staying here till this scene is secured." And so (Ken) said, "I'll go." And
1190		- um - Sergeant (Cardoza) was like, "You need to go to the station. You need
1191		to get – you start writing. You need to go to the station and start writing." I
1192		said, "I'm not leaving till the scene is secure." He said, "I have - " Officer
1193		such and such, I don't remember who it was." He said, "He'll secure the
1194		scene." At that time, the I.D. tech came. And I left.
1195		
1196	Q:	Mm-hm. So you left and went back to the station to prepare
1197	Q.	Trini inii. 50 you fott alia would odok to the comment of properties.
1198	A:	Yes.
1198	Λ.	103.
	0.	police report? Okay. Okay. Who was the scene supervisor to your - to
1200	Q:	your knowledge, who was the supervising officer on that incident?
1201		your knowledge, who was the supervising officer on that incident:
1202	1	D' 11 4'4 Leat I amelded Composet who (Condons) becomes
1203	A:	Being that it was my – beat, I considered Sergeant, uh, (Cardoza), because
1204		he's my sergeant
1205		
206	Q:	I see, okay.
1207		

1208 1209	A:	um – just because, um, Sergeant (Amber) got there first, I didn't consider – she was the scene supervisor till he got there.
1210 1211 1212	Q:	I see. Okay. So ultimatelily, Sergeant (Cardoza) was the scene supervisor, um
1213		
1214	A:	That was my impression.
1215		
1216	Q:	of that – of that incident. And even in your impression as well. Okay.
1217		
1218	A:	Yes.
1219		
1220	Q:	Great. All right. Um – um – during, uh, the entire episode, the incident
1221		involving, uh, uh, your contact as well as other officers' contact with Mr.
1222		Moore, at any time, uh, did you strike Mr. Moore with a closed fist or open
1223		hand?
1224		
1225	A:	No.
1226	1	
1227	Q:	Did you witness any other officers doing the same?
228	٧٠	Dia you maios any outs current according to
1229	A:	No.
1230	Λ.	110.
1230	0.	At any time, did you hit Mr. Moore with, uh, your ASP or – or wood baton?
1231	Q:	The difference of the first transfer with the first of th
	۸.	No.
1233	A:	NO.
1234	0.	Did you witness any other officers do the same?
1235	Q:	Did you williess any other officers do the same:
1236	Α.	No
1237	A:	No.
1238	0.	At any time, did you strike Mr. Moore with any other blunt object, whether on
1239	Q:	your duty belt or in the apartment, uh, Mr. Moore?
1240		your duty belt of in the apartment, un, wir. Woore:
1241	4	N-
1242	A:	No.
1243	0	Did and it was a sure of the or officer do the same?
1244	Q:	Did you witness any other officer do the same?
1245		
1246	A:	No.
1247		
1248	Q:	Did you OC Mr. Moore?
1249		
250	A:	No.
1251		
1252	Q:	Any other officers?

INTERVIEW WITH OFC. GWENDOLYN BROWN Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 29

.253			
254	A:		No.
255			
256	Q:		Did you at – did you discharge your firearm at Mr. Moore?
257	ζ.		
258	A:		No.
259	71.		110.
	0.		Did you – did any other officers?
260	Q:		Did you — did any other officers:
261			\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
262	A:		No.
263			
264	Q:		Did any other officers – you, yourself, or any other officers use your firearm
265	_		as a blunt object?
266			
267	A:		No.
	Α.		110.
268	0		Oleman Wilest about higher Did you high Mr. Magra in any fachian?
269	Q:		Okay. What about kicks? Did you kick Mr. Moore in any fashion?
270			
271	A:		No.
272		· c	
273	Q:		What about any other officers?
274			•
275	A:		No.
	л.		110.
276	0		Olever IIm lette and I'll take a naven and
277	Q:		Okay. Um – let's see. I'll take a pause, and
278			
279	Q2:		(Gwen), uh – I know you mentioned that Hayes had said something
280			downstairs about, uh, Mr. Moore using drugs, drinking all day. When - in
281			your contact with him, did you see any signs or symptoms of, you know,
282			influence of drugs or alcohol that you could tell?
283			
284	A:	257	Mr. Moore appeared to be – it was hard for him to focus. Because when I –
	Α.		kept trying to bring him back to answer my questions in regards to what was
285			going on with he and his roommate, he kept talkin' about the FBI, and – callin'
286			
287			me these other names – and dinosaurs, so – it was – at the point where – I felt
288			like, "Oh, he – he may be 5150 here." He's – he's definitely not makin' any
289			sense. And then again, his roommate, I – I had the knowledge that he had
290			been doing drugs quite a bit that day, so I was under the impression that he's
291			probably pretty high and -5150 all in one.
292			
293	Q2:		Okay. Any - any physiological signs that you recall? Uh
	Q2.		Onay. This diff physiciosical signs that Jou touth. On
294			NT-
295	A:		No.
296			

1297 1298 1299	Q2;	Okay. Um – when you mentioned the – when he kinda pulled you guys back into the – to the room and you guys fell on the mattress, can you describe where in the apartment that mattress was?
1300		
1301	A:	It's $-$ it's on the floor, on the $-$ I wanna say the north wall.
1302		
1303	Q2:	Okay. Let me ask $-I$ – 'cause I – we had an opportunity to go up there
1304		
1305	A:	Mm-hm.
1306		
1307	Q2:	so I – when I picture it, and correct me if you just remember it differently,
1308		but when you first walk in, there's a – like a really small almost entryway
1309		
1310	A:	Mm-hm.
1311		
1312	Q2:	with a bathroom just off to the left
1313		9
1314	A:	Correct.
1315		
1316	Q2:	a small, short, narrow hallway
317	A 8	
1318	A:	Mm-hm.
1319		
1320	Q2:	I'd call that goes into sort of a – living room, kitchen, everything but a
1321	X =½	bedroom area, and then sliding doors that lead into a very small bedroom.
1322		That's – they almost look – if the doors were open, I'd think it would almost
1323		look like all one – not very big room?
1324		, 0
1325	A:	Right.
1326	- 1	
1327	Q2:	But uh
1328	V	×
1329	A:	So when you walk the – walk in, and the bathroom's to the left, this very short
1330		hallway – once you step into this living room area, the mattress was right here.
1331		Up against the wall. This wall.
1332		OP 48
1333	Q2:	Is that sort of – if you were to take the hallway straight back, like right into the
1334	Q2.	- where the - what is that, the - maybe the north and the east walls come
1335		together?
1336		together.
1337	A:	Yes.
1337	Γ	103.
339	02:	Like stuffed in the corner?
	Q2:	Like statica in the corner:
1340	۸.	Yes.
1341	A:	3

10.40		
1342 1343	02.	On off to the sides in thouse
1343	Q2:	Or off to the sides in there?
1345	A:	It was – it was in – in that corner.
1346	7 K.	it was it was in that come.
1347	Q2:	Okay. Okay. And, uh - when - when you - the - I believe you said he fell on
1348	Q2 .	his stomach? In have he fell is that course!
1349		ms stemach. Is now no fort, is that confect.
1350	A:	He fell on his stomach and side, 'cause he had his arm buried up under his
1351		torso.
1352		
1353	Q2:	Okay. And – first, when you fell, did you fall on top of him, on the mattress,
1354		some – like how did you fall? In relation to him?
1355		
1356	A:	I fell – kinda like over his shoulder. 'Cause he's like this, and I went over him,
1357	90	because I still – was trying to hold onto this hand, and when he pulled, I went
1358		- like this.
1359		
1360	Q2:	Okay.
1361	It	
362	A:	And I lost the grip. On his hand.
1363		
1364	Q2:	Okay. Is that sort of across his body? Is that how you're describing it?
1365		
1366	A:	Yes.
1367		
1368	Q2:	Okay. And, uh, how about (Ken)? Where did he end up?
1369		
1370	A:	(Ken) end up straddling him.
1371		
1372	Q2:	Okay. Like
1373		, A
1374	A:	Like across the – the, um, torso area.
1375		
1376	Q2:	And is that like on his knees? Straddling him?
1377		
1378	A:	Yes.
1379		
1380	Q2:	Like – knee – knees are – were his knees on him, or like
1381	4	X.
1382	A:	No.
1383	02.	Öl.
384	Q2:	Oh
1385	۸.	He was they were
1386	A:	He was – they were

INTERVIEW WITH OFC. GWENDOLYN BROWN

Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 32

Q2:	On either side of him.
A:	On either side of him.
02:	Okay. Okay. Um – I know you mentioned (Ken) was using his weight to
	control Mr. Moore, and I was curious, does that mean – like his whole body's
	laying on top of him? Or he's – using his hands in a specific part of his body
	to kinda – hold him down and his weight like that?
A:	He's using his hands.
11.	110 5 doing into indicate
02:	Okay. And – and – you may have answered this, but – what part of his body
QZ.	was he – did he have his hands?
	was he did he have his hands.
Δ.	Well, he still had – hold of the – the arm that we had the handcuffs on. So he
Λ.	still had that – that hand, um, holdin' onto that one.
	sim had that — that hand, um, hordin onto that one.
02.	Okay. And – at the t- well, during the time he was on his stomach, or even –
QZ.	maybe a little bit cocked on his side, where is his face? Was it – was his face
	· · · · · · · · · · · · · · · · · · ·
	in the mattress or away from the mattress or – how was that?
۸.	It was facing to the side. To the side
A.	It was facing – to the side. To the side.
02.	Olsay
QZ.	Okay.
۸.	That I can remember.
Α.	That I can remember.
02.	Did it did it appear his mouth and nose years abstructed? Or not
QZ.	Did it – did it appear his – mouth and nose were obstructed? Or not
	obstructed? Because of that? If you could tell?
۸.	I I doubt receil decree has a verse as hours, resisting us
A.	I – I don't recall, 'cause h- he was so busy – resisting us.
02.	Olsay I'm do you remember only other gamery igorg or commend mesent
QZ:	Okay. Um – do you remember any other supervisors or command present
	besides Sergeant Phillips and Sergeant (Cardoza)? At any time?
Α.	M-
A:	No.
03	NT O
QZ:	No?
A:	Not at the scene.
0	
Q:	Okay. And – had you – prior to this contact, had you ever dealt with Mr.
	Moore or known of him or – just had any other contacts?

1432	A:	I had not had any personal contact with him, but I knew of him.
1433	_	
1434	Q:	Okay – what is it – what did you know of him – generally?
1435		
1436	A:	Um, his mother called the station, I believe, it may have been a month or so
1437		ago, asking for a welfare check, and said that her son was -depressed, um -
1438		she mentioned that he had a lot of issues going on, and could we check on his
1439		welfare? I called her back to let her know, um, Officer (Galvin) and I had
1440	×	gone out, and there was no one at the apartment. So I called her back to let
1441		her know. That was our – our finding.
1442		
1443	Q:	Do you recall what - the specific issues the mom was talking about?
1444	`	
1445	A:	She said her son had called her - earlier that day, said he was very depressed,
1446		um, she said he was going through a sex change, um, he was, um, a heavy
1447		drug user. He drank heavily. And she was concerned about, uh, the
1448		roommate. She said he hung out with a guy that he shared an apartment with
449		in San Francisco, and they eventually got kicked out of that apartment because
450		of fighting and, um – the arguments and – you know, she said something to
451		the effect that San Francisco PD was really sick of them, and she's glad that
152		she was able to get him an apartment over in Berkeley, because she's heard
453		that the Berkeley police are much more lenient and tolerable.
454		that the between police are much more tement and tolerable.
455	Q:	Mmm. Okay. Is, uh – you report – uh, you mentioned Mr. (Edward) Sterling.
456	Q.	And, uh – was Mr. Sterling the gentleman that was in the room that you told
457		to leave at – that day when you first arrived there? Remember, you said you
457		
		were fighting – you and – you and Officer Tu were struggling with Mr.
459		Moore, and there happened to be a – someone in the room.
460	A .	V
461	A:	Yes.
462	0	W. 11.1 (4. M. C. 1'. 0
463	Q:	Would that be Mr. Sterling?
464		
465	A:	Yes.
466		
467	Q:	Okay. Um – had you at – that time, on scene, any chance to speak with Mr.
468		Sterling? Did you have an opportunity to speak with him?
469		
470	A:	After the incident? Or
471		
472	Q:	Correct.
473		
174	A:	No.
475		

INTERVIEW WITH OFC. GWENDOLYN BROWN

Interviewer: Sgt. Hong 02-14/6:17 pm Case # 2013-08510 Page 34

1476 1477	Q:	Okay. So you – you never – even spoke with Mr. Sterling, got a statement from him or anything else?
1478		
1479	A:	No.
1480	1 a	
1481	Q:	Got it. So you – okay. And as you know, Officer (unintelligible) is the one
1482		who obtained his statement after this.
1483	2	
1484	A:	Yes.
1485		×
1486	Q:	Okay. Um – um – (unintelligible)?
	Q.	Only. On an (animonigroup).
1487	01.	Just, uh – let me look at my notes. Uh, I know – that, uh – you answered this
1488	Q1:	question that you believe, uh, based on the information that Officer Smith had
1489		question that you believe, un, based on the information that Officer Shiftin had
1490		given you that Mr. Moore had a warrant. If you, uh, if he hadn't had a
1491		warrant, would you have taken him, uh, for evaluation?
1492		
1493	A:	Yes.
1494		
1495	Q1:	And what would that be based on?
196		
1497	A:	Becaused on, uh, his behavior.
1498	11.	2000
1499	Q1:	Did - in any time you were talking to him, at the threshold of his door, did he
	Q1.	ever appear to have a problem breathing or express any – medical problems?
1500		ever appear to have a problem breathing of express any medical problems.
1501	4	NT.
1502	A:	No.
1503		1 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1504	Q1:	How do you feel about this incident? In retrospect?
1505		
1506	A:	I know that I didn't do anything wrong. I know the officers on scene didn't do
1507		anything wrong. But it still doesn't change the fact that a man is dead.
1508		
1509	Q1:	Is that upsetting?
1510		
1511	A:	Very much so. Um – my heart goes out to his family. Because despite –
1512	11.	someone's child died. So yes. It is very upsetting.
1512		Someone being area. So your area way 1
	0.	Any other questions?
1514	Q:	Any onior questions:
1515	00	N
1516	Q2:	Nope.
1517	_	T 1 01 - 1 10 000 0 1-1 Dec 1 1012 1
518	Q:	End of interview with Officer Gwendolyn Brown, 1913 hours.
1519		
1520		

INTERVIEW WITH OFC. GWENDOLYN BROWN
Interviewer: Sgt. Hong
02-14/6:17 pm
Case # 2013-08510
Page 35

	This transcript has been reviewed with the audio recording submitted and it is an accurate
1522	transcription.
1523	Signed

PAGES 349-453 WITHHELD

Medical Records - Confidential Under State Law and HIPPA

PROPERTY SEARCH Print Date/Time: 2/13/2019 11:25:53 AM

Print Date/Time: 2/13/2019 11:25:53 AM
Tag Number Description
Storage Location

PROPERTY 1200M PRODUCED THESE RECORDS

torage Loca	ation	+ LODOCCD	111000	•	Facili
****				*****	
4723	Coronar's Report (Kavier Moore)				
51-B 7116	PLASTIC BAG				HAIN
32-C	runditt und				MAIN
7115	BUTCHER PAPER				
12-C	BLACK CORD				MAIN
12-C	Banck Corp				HAIN
113	STRIPPED SHIRT				
2-c 112	FINGERNAIL CLIPPINGS				MAIN
1-C	Tanadama daritanan				MAIN
111	DECEDENTS PRINTS				
11-C	DNA BLOOD CARD				HAIN
1-C					HAIN
109 G LOCKER	GLASS PIPE W/STEEL WOOL OFF OF BODY				DAG AN
817	video clips are stored in the crime scene unit digital pho	EDS/Video darabase No-ini-			שא טאם
RIPIC 816					CSD
RIPIC	photos are stored in the Crime Scene Unit digital photos d	atabase VeriPic.			CSU
220	photos				
RIPIC 866	photos are stand in the cut-				CSU
RIPIC	photos are stored in the Crime Scene Unit digital photos d				CSU
390	0.4 grams - MARIJUANA- One stamp-sized ziploc baggie conta	ining a green leafy substance.			
NIN 1 1805	Evidence #7- two pennies .	, , , , , , , , , , , , , , , , , , , ,			NARCOTI
815	Evidence #13- silver ring with small clear stones.				
814					SAFE M
12-C	Evidence #13- black toiletry travel case with SF logo on the	he side containing a black wallet	, glide personal	lubricant x 2, alc	MAIN
6013 /ERFLOW	Evidence \$12- black Remington travel case containing three	blue gloves and a black shop sty	ine		
ULA ULA	Evidence #11 - AT and 'T statement bill and north shore Agen	1	illy,		HAIN
2-A					MAIN
011 3-B	Evidence #10- small white plastic container brand "Johnson	and Johnson" containing three am	all baggies appe	ared to be empre and	
810	Evidence #9 - yellow metal link chain two pices.			to be amply, cad	HAIN
809					SAFE H
2-C	Evidence #9 - small brown box brand US POLO ASSA containing	ng numerous small blue plastic it	ems, yellow caps	ule style pills (CSO	MAIN
808	Evidence #8 - white coffee cup with white residue and tissu	inside of coffee cup		, , , , , , , , , , , , , , , , , , , ,	HALA
2-A 807	Evidence #7- yellow metal hoop earring.	the state cop.			HAIN
	•			•	SAFE H
806	Evidence #7- milver metal hoop earring.				0,11,11
804	Evidence #7- small brown box with element sterver				SAFE M
2-A	Evidence #7- small brown box with elephant picture - contain	ning rour loose pilss, a pin and	bobby pin.		MAIN
803 3-B	Evidence #6 - hypodermic needle with orange cap.				
802	Evidence #5 - prescricption box only pro air HFA and 5 blue	Instruction papers for Heren He			MAIN
2-A 959		habers int Mooie X3	Aret'		MAIN
	Evidence #3 - small white straw.				

	74712 J51-B Total Rows:	35422 151-B 35419	35421 35193 151-B 36526 151-B	35420 I51~B 35194 I51-B	26801 C12-5 26800 D32-C
	Medical Reports (Xavner Moore)	CD's Digital Photographs CD's Interviews of Involved Officers	Flash Drive - Gaia Building Surveillance Video CD Xavier Moore's 9:1 Call on 01/11/13 CD Interviews with Elysse Moore (by Grant #29)	CD - Hayes' 911 Call (and) BPD Police-1 Radio DVD Video Interview of John Hayes	ldence #2 - leopard print fabric sleepwear bi
					brand of
					garment "H&M"
	MAIN	MAIN	MAIN MAIN	MAIN	MAIN

ORI:CA0010300
Case Number:2013-00008510
Tag Number:44713
Property Type:Documents
Description:Coroner's Report (Xavier Moo Facility Name:MAIN
Storage Location:J51-B



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829 (510) 268-7300 / (510) 268-7333 (fax)

Investigator Narrative

Decedent: -

MOORE, Xavier Christopher

Case Number: Investigator:

2013-00538 Karen Easling

First Call Information:

On Wednesday, February 13, 2013, about 0245 hours, Nurse R. MORENO of the Emergency Room (ER) at Alta Bates Medical Center-Ashby Campus called to report the death of Xavier MOORE. MOORE was transported to the hospital ER after he became unresponsive while Berkeley Police Department (BPD) officers were attempting to restrain him. Cardiopulmonary Resuscitation (CPR) was initiated by BPD. Berkeley Fire Department arrived, on scene, and continued life-saving measures while en route to the hospital. MOORE arrived unresponsive in the ER approximately 0110 hours. Hospital personnel continued life saving measures, without success, and death was pronounced by Dr. B. BONNES at 0134 hours. (KEE8410)

Medical Summary:

According to BPD, MOORE became unresponsive while officers were attempting to detain him for a psychiatric hold. While officers were struggling to restrain MOORE, he was face down, on a mattress, on the floor. Officers were able to handcuff MOORE, using two sets of handcuffs, due to his size. MOORE continued to resist after being handcuffed. An ankle strap was used to restrain MOORE's feet. Shortly after being restrained, MOORE stopped resisting and was moved onto his side by BPD. At that time, MOORE was breathing and had a pulse. About one minute later, MOORE became unresponsive. He was not breathing and officers were unable to find a pulse. Officers immediately removed the handcuffs from MOORE's wrists and moved him onto his back to begin CPR.

According to friends, at the scene, the decedent was under the influence of methamphetamines, alcohol, and marijuana. MOORE had been on a drug binge for several days and was behaving unusually.

According to MOORE's mother, Elysse PAIGE-MOORE, the decedent was a diagnosed paranoid schizophrenic. MOORE was obese, had breathing difficulties and high blood pressure. MOORE was transgender and taking estrogen. He also had a history of drug addiction.

Four vials of blood were collected from the hospital. (KEE8410)

Description of the Death/Injury Scene:

The decedent was pronounced in the ER of Alta Bates Medical Center- Ashby Campus.

About 0320 hours, Deputy M. AHLF #1708 and I (EASLING) arrived at the hospital ER and saw the decedent face up on a hospital bed with medical therapy in place. I conducted a general visual examination of MOORE and saw no signs of trauma. He was moved to a gurney and into the Coroner's van for transportation to the Coroner's Bureau.



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829 (510) 268-7300 / (510) 268-7333 (fax)

About 0440 hours, we returned to the Coroner's Bureau and processed the decedent into the morgue. I placed paper bags over the decedent's hands and secured them in place with zip ties. Intake photos were taken at this time. (KEE8410)

Body Identification:

The decedent was identified as Xavier MOORE based on a photograph located in the Consolidated Records Information Management System (CRIMS). The photo and general description matched the decedent. (KEE8410)

On Friday, February 15, 2013, I (BORDI) received a fax from the Central Identification Bureau (CIB) which stated the submitted fingerprints were compared to MOORE's associated personal file number (PFN) ATH177. CIB determined the fingerprints were a match. (EB1879)

Next of Kin Investigation:

The decedent was never married and had no children. His parents, Arthur MOORE and Elysse PAIGE-MOORE, are his legal next of kin. (KEE8410)

Other Agency Reports:

Officer G. BROWN #16 of the Berkeley Police Department will be the primary investigator for this case with a report number of 13-8510. (KEE8410)

Property and Evidence:

The decedent and four vials of blood were collected and processed into the Coroner's Bureau. Receipt #33271 was issued. MOORE's property had been removed and secured in a plastic bag prior to my arrival at the hospital. I collected the property, one shirt, and secured it in evidence drying cabinet #3. (KEE8410)

Coroners Fees:

As of February 13, 2013, the Coroner's fees are for body preparation (\$67.00) and body removal (\$254.00) for a total of \$321.00.

I explained the roll of the Coroner's Bureau to MOORE's mother. (KEE8410)

Other Investigative Details/ Supplemental Information:

On February 13, 2013, Nurse R. MORENO called to report the death of MOORE. At that time MORENO had limited information, but he said MOORE was resisting arrest while being restrained when he became unresponsive. I contacted BPD dispatch and requested the officer assigned to the case contact the Coroner's Bureau. Officer G. BROWN contacted our office within minutes. Officer BROWN stated that BPD had been dispatched to MOORE's residence on a disturbance call. BPD attempted to place MOORE on a 72 hour psychiatric hold and he resisted. MOORE was restrained and became unresponsive. I asked Officer BROWN to fax a copy of her report to our office when it was complete.

According to the BPD police report, on February 12, 2013 officers were dispatched to MOORE's residence located at 2116 Allston Way in Berkeley. Officers arrived, on scene, about 2357 hours and contacted MOORE in the doorway of his residence. Officers attempted to detain MOORE for a psychiatric hold and MOORE resisted.



Alameda County Sheriff's Office Gregory J. Ahern, Sheriff / Coroner Coroner's Bureau, 480 4th Street, Oakland, CA 94607-3829 (510) 268-7300 / (510) 268-7333 (fax)

On February 14, 2013, while performing an autopsy on MOORE, Dr. T. BEAVER, Chief Forensic Pathologist, and assisting staff located a broken glass pipe, commonly used for smoking methamphetamines and other illicit drugs, in MOORE's hair. The pipe was photographed and placed into evidence. (KEE8410)

Findings:

On April 15, 2013, I reviewed this case to determine a manner of death. Upon reviewing the Autopsy Protocol, case file, and other documents associated with this case, I find this death to be an accident. The autopsy protocol established by Dr. T. BEAVER indicated the cause of death as acute combined drug intoxication. Other significant conditions listed were morbid obesity and cardiomegaly. (KEE8410)

Supervisor Review:

On 04/23/13, I (Sgt. D. HARRIS) reviewed this case. I concur with the findings and approve this case for closure. (DH1113)



Case Name:

Moore,

Xaiver

TOXICOLOGY NUMBER: CVT-13-3018

28 ml femoral blood labeled "Moore, Xavier; 02/14/2013; 2013-00538"

Specimen Description:

Delivered by Tricor

Date 15-Feb-13

Received by Bill Posey

Date 15-Feb-13

Request: Complete Drug Screen

Agency Case #

2013-00538

Requesting Agency

Alameda Co. Coroner's Office

Attn: Acct's Payable 480 4th Street

Oakland CA 94607

Report To

Alameda Co. Coroner's Office

Attn: Dr. Beaver 480 4th Street Oakland CA 94607

Specimen: Femoral Blood Sample

RESULTS

Complete Drug Screen: Methamphetamine and Opiates detected, No other common acidic, neutral or basic drugs detected. No blood Ethyl Alcohol detected.

d-Methamphetamine = 0.74 mg/L d-Amphetamine = 0.06 mg/L

Codeine

 $= 0.34 \, \text{mg/L}$

Morphine

= Negative

Acetylmorphine

= Negative

Blood Methamphetamine Ranges

Effective Level:

(0.01 - 0.05 mg/L)

Potentially Toxic:

(0.2 - 5 mg/L)

Blood Codeine

Ranges

Effective Level: (0.01-0.25 mg/L) Potentially Toxic: (0.3-1 mg/L)

Blood Amphetamine Ranges Effective Level: (0.02 - 0.15 mg/L)

Potentially Toxic:

(0.2 mg/L)

B.L. POSEY S.N. KIMBLE Piractors

1580 Tollhouse Road Clovis, California 93611 Phone (559) 323-9940 Fax (559) 323-7502

B. L. Posey March 01, 2013

Alameda County Sheriff's Office

Coroner's Burcau 480 4th Street, Oakland, CA 94607-3829

Gregory J. Ahern, Sheriff

Director of Emergency Services Coroner - Marshal

MEMORANDUM

DATE:

February 14, 2013

FROM:

Thomas R. Beaver, M.D.

TO:

Case File 2013-00538

SUBJECT: AUTOPSY PROTOCOL

Autopsy performed upon the body of Xavier Christopher Moore at the Coroner's Bureau, 480 4th Street, Oakland, California, on February 14, 2013, at 9:40 a.m.

AUTOPSY FINDINGS

- I. ACUTE COMBINED DRUG INTOXICATION (SEE COMMENT):
 - A. HISTORY OF PHYSICAL ALTERCATION
 - B. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD REPORTS D-METHAMPHETAMINE = 0.74 MG/L, D-AMPHETAMINE = 0.06 MG/L, CODEINE 0.34 MG/L, MORPHINE = NEGATIVE, ACETYLMORPHINE = NEGATIVE, ETHYL ALCOHOL = NEGATIVE.
 - C. PULMONARY EDEMA, BILATERAL, ACUTE, MARKED.
- II. CARDIOMEGALY (800 GRAMS) WITH MODERATE LEFT VENTRICULAR DILATATION AND HYPERTROPHY:
 - A. INTRAMUSCULAR LEFT ANTERIOR DESCENDING CORONARY ARTERY.
- III. MORBID OBESITY, CHRONIC.

COMMENT: THE DECEDENT IS A 41-YEAR-OLD MORBIDLY OBESE MALE WITH SEQUELAE INVOLVING SEVERE CARDIOMEGALY, WITH LEFT VENTRICULAR DILATATION AND HYPERTROPHY, WHO BECAME UNRESPONSIVE DURING A WELFARE ENCOUNTER WITH LAW ENFORCEMENT PERSONNEL. POSTMORTEM TOXICOLOGICAL ANALYSIS OF LEG VEIN BLOOD DEMONSTRATED METHAMPHETAMINE AND CODEINE AT TOXIC LEVELS. THEREFORE, BASED ON THE INFORMATION AVAILABLE TO ME AT THIS TIME, IT IS MY OPINION THAT THE DEATH RESULTED FROM ACUTE COMBINED DRUG INTOXICATION WITH A CONTRIBUTION FROM MORBID OBESITY AND INTRINSIC CARDIOVASCULAR DISEASE.

Sheriff-Coroner Alameda County

Body of XAVIER CHRISTOPHER MOORE

CAUSE OF DEATH: ACUTE COMBINED DRUG INTOXICATION.

Other conditions: MORBID OBESITY; CARDIOMEGALY.

CC: EMS

District Attorney Investigations Bureau

1 EXTERNAL EXAMINATION

- 2 The body is that of an unembalmed, well-developed, morbidly
- 3 obese male appearing approximately the reported age of 41 years.
- 4 The length is 70 inches. The weight is 347 pounds. Rigor
- 5 mortis is present in the muscles of the jaw and extremities.
- 6 Livor is present over dorsal aspect of the body where it
- 7 blanches sluggishly to palpation.
- 8 There is prominent creasing of the earlobes bilaterally.
- 9 Cosmetic earlobe piercing is present bilaterally. The ears are
- 10 otherwise unremarkable. The head appears normocephalic. The
- 11 scalp is covered by long (up to 40 cm), dark brown hair, which
- 12 contains braided hair extensions. The eyebrows are
- 13 unremarkable. There is no crepitus to palpation over the bridge
- 14 of the nose. The irides are brown. There is prominent arcus
- 15 senilis. The palpebral and bulbar conjunctivae are congested,
- 16 consistent with the pattern of livor. There is drying artifact
- 17 on the eyes anterior. Specifically absent are petechiae. The
- 18 palpebral and bulbar conjunctivae are otherwise unremarkable.
- 19 The external nares are unremarkable. The nasal septum is intact
- 20 and in the midline. The decedent's natural teeth are in good
- 21 repair. There are no chipped teeth. There are no broken teeth.
- 22 There is no evidence of trauma to the mucosal surfaces of the

- 23 oral cavity. The neck is symmetrical and well developed. The
- 24 trachea is palpated in the midline. There are no palpable
- 25 masses.
- 26 The chest is symmetrical and well developed. There is
- 27 prominent gynecomastia bilaterally. The abdomen is markedly
- 28 protuberant, firm and free of palpable masses. There are
- 29 numerous striae over the abdomen. The external genitalia are
- 30 normal adult uncircumcised male with both testes palpable in the
- 31 scrotal sac. There are no palpable masses. There is no
- 32 evidence of trauma to the external genitalia.
- 33 The lower extremities are symmetrical and well developed.
- Attached to the left great toe are two cardboard
- 35 identification tags bearing identifying information for the
- 36 decedent.
- 37 The upper extremities are symmetrical and well developed.
- 38 The fingernails are of medium length and irregularly trimmed.
- 39 There is a moderate amount of dirt beneath the fingernails.
- 40 There is no tissue or hair beneath the fingernails. There is no
- 41 tearing of the fingernails. Nail clippings are obtained.
- The back is symmetrical and well developed. There is no
- 43 evidence of trauma to the anus.

- 44 EVIDENCE OF THERAPY: Protruding from the oral cavity is an
- 45 endotracheal tube. Cardiac monitoring patches (six) are
- 46 scattered over the torso and upper extremities. Defibrillator
- 47 electrode pads (two) are adherent to the right anterior chest
- 48 and left lateral chest. There is also a defibrillator pad
- 49 adherent to the left lower quadrant of the abdomen. Protruding
- 50 from the anterior aspect of the right lower leg is an
- 51 intraosseous catheter. Present on the left lower leg is a gauze
- 52 dressing that covers an intraosseous catheter. Protruding from
- 53 the dorsum of the right hand is a plastic vascular catheter.
- 54 Present on the dorsum of the left hand is a needle puncture mark
- 55 surrounded by a 3 x 3 cm area of apparent contusion. Attached
- 56 to the distal aspect of the left middle finger is a pulse
- 57 oximeter transducer. There is no other cutaneous evidence of
- 58 recent therapeutic intervention.
- 59 SCARS AND IDENTIFYING MARKS: Present on the right upper
- 60 quadrant of the abdomen is an indistinct irregularly shaped area
- 61 of hyperpigmentation containing multiple irregularly shaped,
- 62 variably sized scattered cutaneous defects in various stages of
- 63 healing. Some of these are crusted and centrally hypopigmented.
- 64 Similarly, present in the right inguinal area and extending onto
- 65 the right lateral hip are multiple scattered irregularly shaped,

- 66 variably sized cutaneous excoriations which are crusted. There
- 67 are numerous striae in the areas of the shoulders and thighs,
- 68 and axillary areas bilaterally. Present on the posterior aspect
- 69 of the right upper arm is a 4 x 4 cm roughly circular scar.
- 70 Present on the extensor aspect of the right forearm is a 5 \times 5
- 71 cm irregularly shaped area of cutaneous scarring. There are no
- 72 other convincing scars or identifying marks.
- 73 EVIDENCE OF INJURY: Present on the wrists bilaterally are
- 74 circumferential areas of abrasion and contusion. Photographs
- 75 are obtained and subcutaneous dissection is undertaken. Present
- 76 on the right posterior lower leg is a 3 x 5 cm area containing
- 77 contusions and abrasions. Photographs are obtained. There is
- 78 no other cutaneous evidence of recent significant injury. There
- 79 are no palpable fractures of the long bones of the lower
- 80 extremities. There are no palpable fractures of the long bones
- 81 of the upper extremities.
- 82 INTERNAL EXAMINATION
- Through the usual Y-SHAPED INCISION, 10 cm of yellow
- 84 subcutaneous adipose tissue and soft, red-brown musculature are
- 85 revealed. The appendix vermiformis is intact and grossly
- 86 unremarkable. The pericardial sac contains 20 mL of pale

- 87 yellow, clear fluid. There are no unusual odors. There are no
- 88 rib fractures.
- 89 CARDIOVASCULAR SYSTEM: The aorta is moderately dilated at
- 90 its root. The aorta is otherwise of normal course and caliber.
- 91 There are no atheromas or aneurysms present. The great vessels
- 92 have their usual anatomical relationships. The pulmonary
- 93 arteries appear patent and free of thromboemboli. The pulmonary
- 94 veins are grossly unremarkable. The vena cava is grossly
- 95 unremarkable. The heart weighs 800 grams. The epicardial
- 96 surface is smooth, glistening and red-brown with an abundant
- 97 amount of yellow subepicardial adipose tissue. The coronary
- 98 ostia are patent and give rise to a normally distributed
- 99 coronary arterial system, which is right dominant. The left
- 100 anterior descending coronary artery assumes an intramuscular
- 101 course during the distal two-thirds of its distribution. The
- 102 coronary arteries are thin, elastic, and free of
- 103 atherosclerosis. Serial sections through the myocardium are
- 104 firm and red-brown with no areas of softening or fibrosis.
- 105 There is circumferentially symmetrical left ventricular
- 106 hypertrophy with moderate dilatation. The left ventricular
- 107 myocardium measures 2.9 cm in thickness. The right ventricular
- 108 myocardium measures 0.5 cm in thickness. The cardiac valves and

- 109 chambers have their usual anatomical relationships. The valve
- 110 leaflets are thin and delicate, without vegetations. Sections
- 111 through the area of the conduction system are grossly
- 112 unremarkable.
- 113 RESPIRATORY TRACT: The patient has an endotracheal tube.
- 114 The trachea and mainstem bronchi are otherwise free of foreign
- 115 material. The mucosal surfaces of the trachea and mainstem
- 116 bronchi are grossly unremarkable. The right lung weighs 1060
- 117 grams. The left lung weighs 650 grams. The pleural surfaces
- 118 are smooth, glistening and pink-tan to red-brown. Serial
- 119 sections are spongy and pink-tan to red-brown with areas of
- 120 dependent congestion. There are no masses. Abundant frothy
- 121 liquid material exudes from the cut surfaces bilaterally.
- 122 Emphysematous changes are inconspicuous.
- 123 GASTROINTESTINAL TRACT: The esophagus is of normal course
- 124 and caliber. The serosal surface of the esophagus is grossly
- 125 unremarkable. The esophagus is free of foreign material. The
- 126 mucosal surface of the esophagus is grossly unremarkable. The
- 127 serosal surface of the stomach is grossly unremarkable. The
- 128 stomach contains 300 mL of viscous dark green-brown material, a
- 129 portion of which is retained. Medications are not identified.
- 130 The mucosal surface of the stomach is grossly unremarkable. The

- 131 serosal surface of the small bowel is grossly unremarkable. The
- 132 small bowel contains a moderate amount of yellow-green liquid
- 133 material. Medications are not appreciated. The mucosal surface
- 134 of the small bowel is grossly unremarkable. The serosal surface
- 135 of the colon is grossly unremarkable. The colon contains a
- 136 moderate amount of pasty green-brown fecal material. The
- 137 mucosal surface of the colon is grossly unremarkable.
- 138 HEPATOBILIARY TRACT: The liver weighs 2900 grams. The
- 139 smooth, glistening, red-brown capsular surface is intact.
- 140 Serial sections are firm and red-brown with preservation of
- 141 normal hepatic lobular architecture. Steatosis is not apparent.
- 142 Fibrosis is inconspicuous. Mass lesions are not identified.
- 143 The gallbladder is intact and contains 40 mL of viscous, dark
- 144 green liquid bile, a portion of which is retained. Stones are
- 145 not identified. The biliary tract appears free of obstruction.
- 146 HEMATOPOIETIC SYSTEM: The spleen weighs 230 grams. The
- 147 slate gray connective tissue capsule is intact and slightly
- 148 wrinkled. Serial sections are soft to gelatinous and red-brown.
- 149 There are no mass lesions. The lymph nodes and bone marrow are
- 150 grossly unremarkable.
- 151 ENDOCRINE SYSTEM: The right and left adrenal glands are of
- 152 normal size, shape and position. On cut section the cortices

are yellow and the medullae are soft and gray. There are no 153 hemorrhages or mass lesions. The pancreas is of normal size, 154 shape and position. The surface of the pancreas is grossly 155 unremarkable. Serial sections demonstrate preservation of the 156 157 normal pancreatic lobular architecture. There are no calcifications or hemorrhages. The thyroid gland is of normal size, 158 shape and position. The serosal surfaces and cut sections are 159 grossly unremarkable. The pituitary is of normal size, shape 160 161 and position. GENITOURINARY TRACT: The right and left kidneys weigh 250 162 and 250 grams each, respectively. The capsules strip with ease 163 to reveal smooth, dark red-brown cortical surfaces punctuated by 164 occasional fetal lobulations. There are no cortical cysts. On 165 cut section the cortices and medullae are well demarcated in 166 their respective zones. There are no mass lesions. The renal 167 pyramids are grossly unremarkable. The caliceal systems are 168 grossly unremarkable. Stones are not identified. The ureters 169 are of uniform course and caliber. The serosal surface of the 170 urinary bladder is grossly unremarkable. The urinary bladder 171 contains no appreciable urine. Bladder washings are obtained. 172 The prostate gland is of normal size, shape and position. 173 The prostate gland is otherwise unremarkable. The testicles are 174

- 175 of normal size, shape and position. A biopsy is obtained.
- 176 There is no evidence of trauma.
- 177 HEAD: Reflecting the scalp demonstrates no abnormal
- 178 collections of extravasated blood within the soft tissues of the
- 179 scalp or over the surface of the bony calvarium. Reflecting the
- 180 temporalis muscles bilaterally demonstrates no abnormal
- 181 collections of extravasated blood. Reflecting the bony
- 182 calvarium demonstrates no epidural, subdural or subarachnoid
- 183 collections of extravasated blood. Skull fractures are not
- 184 identified. Discolorations of the bony calvarium are not
- 185 apparent. The superior sagittal sinus and all venous dural
- 186 sinuses appear patent and free of thromboemboli. The brain in
- 187 the fresh state weighs 1550 grams. From the vertex, the
- 188 cerebral hemispheres are symmetrical, without significant
- 189 atrophy or edema. The leptomeninges over the surface of the
- 190 brain and around the base of the brain are thin, clear and
- 191 delicate. Purulent exudates are not appreciated. There is no
- 192 herniation of the hippocampal unci or cerebellar tonsils. The
- 193 circle of Willis has its usual anatomical relationships. There
- 194 are no atheromas or aneurysms present. Serial coronal sections
- 195 of the cerebral hemispheres demonstrate no gross abnormality of
- 196 the gray and white matter. Mass lesions are not identified.

197	Hemorrhages are not present. Serial sagittal sections of the
198	
199	architecture. There is no gross abnormality of the gray and
200	white matter. Serial transverse sections of the brainstem and
201	midbrain demonstrate preservation of the normal architecture.
202	There are no gross abnormalities of the gray and white matter.
203	Mass lesions are not identified. Hemorrhages are not present.
204	Stripping the dura from the base of the skull demonstrates no
205	basilar skull fractures or bony deformities. Examination of the
206	superior cervical spinal canal upon flexion, extension and
207	rotation of the head demonstrates no fractures or subluxations.
208	NECK: The hyoid bone and thyroid cartilage are intact.
209	There are no abnormal collections of extravasated blood over the
210	surface of the hyoid bone or thyroid cartilage. Laminar
211	dissection of the strap muscles of the neck demonstrates no
212	abnormal collections of extravasated blood. The cricoid
213	cartilage is intact and grossly unremarkable. The larynx and
214	hypopharynx are free of foreign material. The mucosal surfaces
215	of the larynx are grossly unremarkable. The epiglottis and
216	vocal cords are grossly unremarkable.
217	The tongue is of normal size, shape and position. The
218	surface of the tongue is grossly unremarkable. Sections

Body of XAVIER CHRISTOPHER MOORE

219	demonstrate no abnormal collections of extravasated blood and									
220	are otherwise unremarkable.									
221	TOXICOLOGY SPECIMENS:									
222	Leg vein blood is collected and submitted for toxicological									
223	analysis,									
224	Heart blood is collected and retained.									
225	Vitreous is collected and retained.									
226	Bile is collected and retained.									
227	Gastric contents are collected and retained.									
228	Bladder washing is collected and retained.									
229										
230 231	Ste-									
232	Thomas R. Beaver, M.D.									
233	TRB/jkm									

Storage Location Tag Number

Description

26814 D32-C 26813 OVERFILOW 26812 152-A 26811 J63-B 26810 26866 VERIPIC 27390 MAIN 1 26805 26815 M3 26804 D22-A 26803 J63-B 26802 I52-A 26806 M3 26809 D32-C 26808 U22-A 26807 VERIPIC 27220 TAG 26817 **J63-В** 26959 3 M3 H61-C 27109 26816 H61-C 27110 44713 J51-B 27116 D32-C 27115 D32-C 27114 D32-C 27114 D32-C 27111 D32-C 27113 D32-C 27113 VERIPIC VERIPIC LOCKERS Evidence Evidence Evidence Evidence #7- small brown box with elephant picture Evidence Evidence #7-Evidence Evidence Evidence #9 - yellow metal link chain two pices. Evidence #10- small white plastic container brand "Johnson and Johnson" containing three small baggies appeared 0.4 grams - MARIJUANA- One stamp-sized ziploc baggie containing a green leafy substance. photos Evidence #11 - AT and T statement bill and north shore Agency letter Evidence #13- silver ring with small clear stones Evidence #12- black Remington travel case containing three blue gloves and a black shoe string. Evidence #13- black toiletry travel case with SF logo on the side containing a black wallet, glide personal lubricant x 2, photos video clips are stored in the crime scene unit digital photos/video database VeriPic. Evidence photos are GLASS PIPE W/STEEL WOOL DNA BLOOD CARD DECEDENTS PRINTS Coroner's Report (Xavier Moore) FINGERNAIL CLIPPINGS STRIPPED SHIRT BLACK CORD BUTCHER PAPER PLASTIC BAG are #5 - prescricption box only pro air HFA and #3 -#6 -#7- silver metal hoop earring. #8 -#9 - small brown box brand #7- two pennies . stored in the Crime Scene Unit digital photos database VeriPic stored in the Crime Scene Unit digital photos database VeriPic. yellow metal hoop earring. hypodermic needle with orange cap. white coffee cup with white residue and tissue inside of coffee cup small white straw OFF OF BODY SD POLO ASSA containing numerous small blue plastic items, ı 5 blue instruction papers containing four loose pilss, a for Moore pin and bobby pin. Xavier yellow capsule style pills to ре empty, (G50 alc two MAIN MAIN MAIN MAIN MAIN SAFE MAIN MAIN MAIN MAIN MAIN SAFE M SAFE SAFE MAIN NARCOTICS CSU CSU CSU CSU MAIN MAIN MAIN MAIN MAIN MAIN MAIN BAG AND Z Z Z

J51-B	44712 Medical Reports (Xavier Moore)	35419 CD's Interviews of Involved Officers	35422 CD's Digital Photographs I51-B			IS1-B 35421 Flash Drive - Gaia Building Surveillance	I51-B 35194 DVD Video Interview of John Hayes	D32-C CD - Hayes' 911 Call (26801 Evidence #2 - leopard
	r Moore)	olved Officers	hs	CD Interviews with Elysse Moore (by Grant #29)	Call on Ol/II/I3	lding Surveillance Video	John Hayes	CD - Hayes' 911 Call (and) BPD Police-1 Radio	Evidence #1 - leopard print fabric with a knot or tied in the center - brand of garment "H&M".	Evidence #2 - leopard print fabric sleepwear brand freeplay one size.

ORI:CA0010300 ORI:CA0010300 Case Number:2013-00008510 Tag Number:35420 Property Type:Digital Audio Description:CD - Hayes' 911 Call (and) B Facility Name:MAIN Storage Location:I51-B

ORI:CA0010300
Case Number:2013-00008510
Tag Number:35419
Property Type:Digital Audio
Description:CD's Interviews of Involved
Facility Name:MAIN
Storage Location:I51-B

ORI:CA0010300
Case Number:2013-00008510
Tag Number:36526
Property Type:Digital Audio
Description:CD Interviews with Elysse Mo
Facility Name:MAIN
Storage Location:I51-B

ORI: CA0010300 ORI:CA0010300
Case Number:2013-00008510
Tag Number:35422
Property Type:Digital Photos
Description:CD's Digital Photographs
Facility Name:MAIN
Storage Location:I51-B

ORI:CA0010300
Case Number:2013-00008510
Tag Number:35193
Property Type:Digital Audio
Description:CD Xavier Moore's 911 Call o
Description:IST Mame:MAIN
Storage Location:IS1-B

ORI:CA0010300
Case Number:2013-00008510
Tag Number:35194
Property Type:Digital Video
Property Type:Digital Video
Description:DVD Video Interview of John
Facility Name:MAIN
Storage Location:I51-B

ORI:CA0010300 Case Number:2013-00008510 Tag Number:44713 Property Type:Documents Description:Coroner's Report (Xavier Moo Facility Name:MAIN Storage Location:J51-B

Good Morning,

We received some additional inquiries regarding the recent death of a person during contact with our officers. Though we are limited in terms of sharing specific details of this ongoing investigation, we wanted to offer some context where we can, as hopefully this may be of some use to you.

We understand the community's concern over this incident, and the desire to have as much information about this incident as possible.

As you may know, any investigation involving a death such as this includes thorough and detailed interviews with all witnesses and involved parties, the collection and analysis of all available evidence, and preparation of appropriate reports. The Alameda County Coroner's office is conducting their concurrent death investigation as well.

There are significant constraints in place regarding the *immediate* release of information in a case such as this, and we can't comment on specific information or even address inaccuracies which may be expressed in public discussion regarding this incident.

The Berkeley Police Department has a long history of working with respect and sensitivity to mental health issues in our community and among people with whom we come into contact. Our department has a positive reputation in the community for its interactions with mental health consumers.

Furthermore, we are increasing our level of service and expertise in this area through our Department's new Crisis Intervention Team (CIT) program. This program is based on a national, best-practices model for police interactions with people with mental health issues. These training efforts, and the expansion of the program, are continuing throughout the year.

A thorough investigation takes time. We are obliged to wait for the evidence to be examined, the facts to be determined, and the investigation to be completed.

We are committed to conducting a sensitive and thorough investigation, fair to everyone involved, from the family and friends of the decedent, to the officers and firefighters who tried to save the decedent's life.

If anybody has any questions, please contact me.

Thanks,

Jenn

Officer Jennifer Coats
Public Information Officer
Berkeley Police Department
Office of the Chief of Police
Hours: Monday-Thursday, 8:00 a.m. to 6:00 p.m.
(510) 981-5780 (office)
(510) 812-4082 (mobile)
jcoats@cityofberkeley.info



Media Contact:

Ofc. Jennifer Coats Public Information Officer (510) 981-5780

Chief of Police Michael K. Meehan

City of Berkeley Main Line (510) 981-CITY

BERKELEY POLICE DEPARTMENT

2100 Martin Luther King Jr. Way, Berkeley, CA 94704 (510) 981-5900, TDD: (510) 981-5799, police@ci.berkeley.ca.us

Subject Dies Following Struggle With Police



Berkeley, California (February 13, 2013) – On 2/12/13 at approximately 11:49 pm, BPD was dispatched to the 2000 block of Allston Way on a disturbance call. Upon arrival, uniformed officers spoke with the reporting party and were directed to the 41 year old male subject's residence nearby.

During the contact, the subject became increasingly agitated and uncooperative to the officer's verbal commands and began to scream and violently resist. After struggling with officers they were able to gain control of the subject and place him in restraints. The subject continued to kick and scream at officers.

Due to the subject's large stature, officers requested the assistance of the Berkeley Fire Department for a gurney to assist in transporting the subject for further evaluation. While under restraint officers determined the subject was not breathing and immediately began CPR.

BFD arrived and transported the subject to a local hospital where he was pronounced deceased.

Per BPD policy, the District Attorney's Office was notified and the case is being investigated by the Detective Division.

###

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CITY

Wednesday, May 7, 2014

Leaked documents shed new light on Kayla Moore's in-custody death

Police Review Commission unanimously finds that one officer did not continually monitor Moore's vital signs



Activists organize in Berkeley a year after Kayla Moore's death in police custody.

BY KIMBERLY VEKLEROV | STAFF

LAST UPDATED 4 HOURS AGO

Editor's Note:

Comment

This project was a conaboration between the investigative reporting rilogram at the OC Berkeley Graduate School of Journalism and The Daily Californian.

The lawsuit and police reports refer to Moore by masculine pronouns, but the Daily Cal re Moore by feminine pronouns, which was her preference.



On Feb. 12, 2013, police responded to a disturbance call in Downtown Berkeley that ended with the sudden in-custody death of Kayla Moore, a 347-pound black transgender woman with a history of mental illness.

Although an internal investigation conducted by Berkeley Police Department determined that none of the officers present that night were at fault, Moore's death prompted intense criticism of the police department. Members of Moore's family and the community—along with LGBT activists and a police watchdog group — have protested City Coun meetings, marched through Downtown Berkeley and demonstrated in front of the postation. Accusations flew that Moore's death was caused in part by officers' alleged transphobia and racism. The deceased's father, Arthur Moore, filed a wrongful-death lawsuit in February alleging that police "unlawfully seized, restrained, arrested and battered" his daughter, resulting in her death.

A coroner's report released in May 2013 determined Moore's cause of death was a toxic intersection of methamphetamines and codeine, complicated by cardiovascular disease obesity. Police maintain that officers committed no wrongdoing.

But three months ago, Berkeley's independent Police Review Commission, which is com of nine appointed civilians, found that one officer exercised improper police procedure. T commission's confidential findings, which were leaked to The Daily Californian, said, "As lead officer, Officer (Gwendolyn) Brown had the primary duty to monitor Ms. Moore, but ϵ did not constantly monitor her vital signs."

The only information from the commission's findings previously disclosed to the public or the names of officers and the nature of the allegations, which prompted protests at Police Commission meetings.

In her testimony during the internal investigation, Brown said Moore never mentioned should be treathing.

"My heart goes out to (Moore's) family," Brown testified to investigators. "Someone's chile... It is very upsetting."

"My heart goes out to (Moore's) family. Someone's child died... It is ve upsetting."

— Gwendolyn Brown

Brown could not be reached after multiple requests for comment.

The commission, which is not a court of law, also heard testimony that at least one office believed the outstanding warrant for which Moore was arrested may have been meant for different person. Although the commission did not ultimately come to a majority finding or point, the leaked testimony showed a discrepancy among officers' accounts of the night.

The commission's findings were sent to the city manager and the chief of police in March because they were submitted more than a year after the incident, the chief was not perm discipline any officer based on the findings due to an agreement between the police deparant the union that represents BPD officers.

The president of the union that represents the city's police officers said the union disagre the commission's findings. Though the incident was "tragic," said Sgt. Chris Stines, presi the Berkeley Police Association, "no officer was at fault."

The city has filed paperwork to dismiss the wrongful death lawsuit.

After the Daily Cal reached out to the city and police for comment on the leaked report, the launched an administrative investigation through its human resources department to determine the city and police for comment on the leaked report, the launched an administrative investigation through its human resources department to determine the city and police for comment on the leaked report, the launched and administrative investigation through its human resources department to determine the launched and launch



Kayla Moore. Maria Moore/Courtesy

how the information was leaked. Unionized police officers have since refused to attend PRC meetings, and the union has urged the city to launch an independent criminal investigation into the leak.

The city would not comment on the commission's findings, but city spokesperson Matthai Chakko said in an email, "The information you have been provided includes confidential personnel records protected by Penal Code Section 832.7. You have no authorization to possess the documents or the information."

February 12-13, 2013

Just before midnight on the night of Moore's death, her roommate, John Hayes, called 911 and told the operator that Moore had kicked him out of their apartment. According to police reports, Hayes said Moore was "violent," "aggressive" and needed to be "5150'd," referring to a law that allows police to take a person into custody for a mental health crisis.

According to testimony included in BPD's internal investigation, which was made public last year, officers reported that Hayes said Moore had been "drinking and doing drugs all day." Hayes also told police that Moore was a schizophrenic off her medications.

Once BPD officers Brandon Smith and Kenneth Tu, along with Brown, arrived, Hayes unlocked the door to his fifth-floor apartment on Allston Way, near Shattuck Avenue, for police to enter. Brown called out "Xavier" — Moore's legal first name — and Moore came to the door. Brown attempted to engage Moore in a conversation, but Moore was speaking incoherently, according to the internal investigation.

Brown made a physical motion to Tu that they should take Moore into custody and announced, "Well, Mr. Moore, you have a warrant, and we need to go take care of this," according to the internal investigation.

While Smith was downstairs arresting Hayes on a separate outstanding warrant, according to the internal investigation, Brown and Tu moved in and grabbed Moore's hands in an attempt to handcuff her. Moore drew her hands back, pulling the officers forward. All three fell onto a mattress in the living room. Moore was partially on her stomach, according to the internal investigation.

Brown and Tu struggled to handcuff Moore and requested the help of additional officers via radio. Ultimately, eight officers and sergeants arrived at the scene. They used two sets of handcuffs on Moore and a wrap device to restrain her leg movement, according to the internal investigation. Finally, after five to 10 minutes of struggling on the mattress, Moore stopped resisting.

Soon after, Brown realized Moore's chest had stopped moving. Officers moved Moore from being partially on her stomach to completely on her side. About a minute later, officers observed she was no longer breathing and had no pulse, according to the internal investigation. Tu began chest compressions, while Brown kept Moore's airway open and called for a CPR mask, which provides a protective barrier and makes mouth-to-mouth resuscitation more efficient.

The lawsuit filed by Moore's father alleges that officers could have saved Moore's life with mouth-to-mouth resuscitation. It also alleges that Moore's status as a transgender woman was a factor in the officers' decision not to perform the breathing without a mask.

After a confidential board of inquiry on Feb. 19 and Feb. 20, during which commissioners questioned officers and reviewed evidence, the board voted unanimously that Brown had violated Training and Information Bulletin 234, which deals with in-custody deaths. The bulletin states, "Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

When investigating allegations claiming police used force improperly, commissioners were required to consider each officer's individual physical contact with Moore rather



than their combined force. The commission did not sustain any improper-force allegations.

Warrant confusion

"Placing restrained persons in a face-down prone position for long periods of time should be avoided and never leave a restrained person in a face-down prone position without constantly monitoring her vital signs."

 Training and Information Bulletin 234, which deals with in-custody deaths

The internal investigation that was released last year showed a discrepancy between two officers' accounts of the night, which testimony heard by the commission also affirmed.

Prior to arriving at the scene, Smith ran a records check for "Xavier Moore" on a computer system in his car. A \$10,000 warrant out of San Francisco came up, according to testimony heard by the commission and the internal investigation. Smith relayed the information to Brown after arriving at the scene.

Later, Smith learned Moore was about 42 years old, according to his testimony in the internal review. Smith realized that the age listed in the warrant was for a person roughly 20 years older than Moore's estimated age.

In two separate testimonies, Smith told both BPD investigators and the commission that he informed Brown of the age discrepancy.

But during her interview with BPD investigators, Brown said she believed the \$10,000 warrant was for Moore and acted according to that mindset. She also maintained that she would have taken Moore into custody regardless of the warrant because of Moore's erratic behavior.

Moore's family has claimed that her arrest was based on a warrant meant for someone else with the same name. In the wrongful death lawsuit, Arthur Moore alleges that "the officers clearly knew that (Moore) was not the person named in the warrant."

During its board of inquiry into the police actions that night, the commission considered whether Brown "lacked sufficient knowledge to effectuate a valid arrest on the warrant," among other allegations, but did not sustain the allegation, with two commissioners voting to sustain and four voting to not sustain.

Supermajority Necessary

The commission investigated each of the six officers who physically interacted with Moore to see if he or she committed the same procedural violation as Brown. Although allegations were not sustained against any other officer, the board voted 4-2 that Tu did not properly monitor Moore's vital signs, according to the leaked findings. Five out of six votes were required to sustain allegations in the Moore case.

In a typical death case for which the commission holds a board of inquiry, all nine commissioners are present, and five out of nine votes are required to sustain an allegation. But in the Moore case, one commissioner was on sick leave, and two commissioners recused themselves because they did not think they could vote impartially.

With only six commissioners present for the board of inquiry, the commission sought the advice of the city attorney to interpret the commission's regulations in deciding what number of votes constituted a majority. In a letter to Katherine Lee, who oversees the commission's investigations, City Attorney Zach Cowan wrote, "The PRC regulations do not specifically state the number of affirmative votes needed to sustain an allegation ...

However, based on our review of the relevant PRC regulations, we advised that five votes were needed to sustain an allegation."

Had the commission used a simple majority — four out of six — the allegation against Tu would have also been sustained.

What Followed

The internal investigation ultimately concluded Moore was in violation of California Penal Code Section 69 — resisting an executive officer — which is a more serious version of resisting arrest.

According to the commission's investigation, none of the responding officers had gone through crisis-intervention training, a program that teaches police how to deal with people experiencing a mental health crisis. Since the incident, BPD has expanded the number of officers who receive the training. As of February 2013, nine officers had received the training. Today, there are 24 officers who have completed the program, according to BPD officer Jeff Shannon.

Last week, UC Berkeley's student senate unanimously approved a bill in Moore's memory that highlights a need for greater mental health services in the city.

Commission Challenges

The commission's findings ultimately bore no weight in the police department.

Regardless of which allegations were ultimately sustained, BPD Chief Michael Meehan was not permitted to discipline any officers based on the commission's findings, because they were submitted

more than 120 days after the incident occurred. Meehan declined to comment due to the ongoing lawsuit.

The commission could not begin its investigation until BPD's own internal review was complete, which happened in May 2013. PRC officer Katherine Lee said collecting testimony and evidence in the Moore case was particularly lengthy.

"Even in a simple case, it takes a lot of work to meet 120 days," Lee said. "In this case, it was almost impossible."

Kimberly Veklerov is the executive news editor. Contact her at kveklerov@dailycal.org and follow her on Twitter @KVeklerov.





Maria Moore/Courtesy

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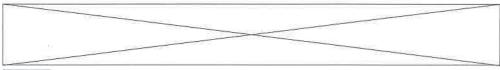
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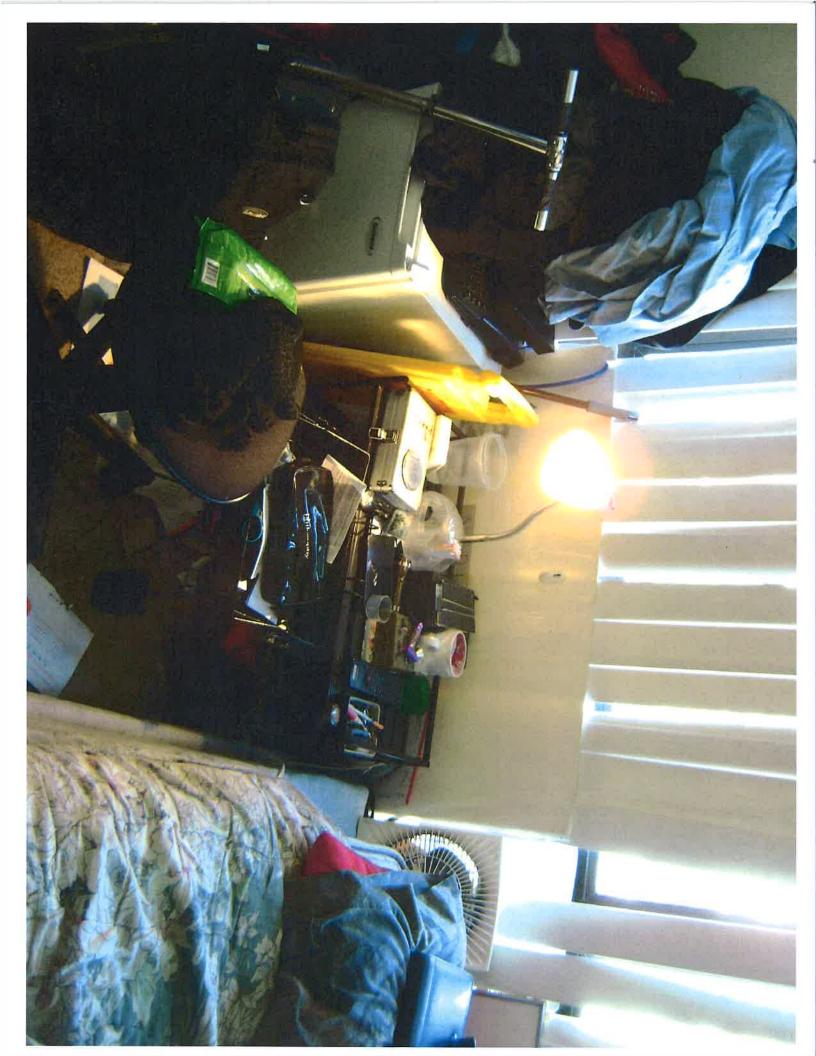
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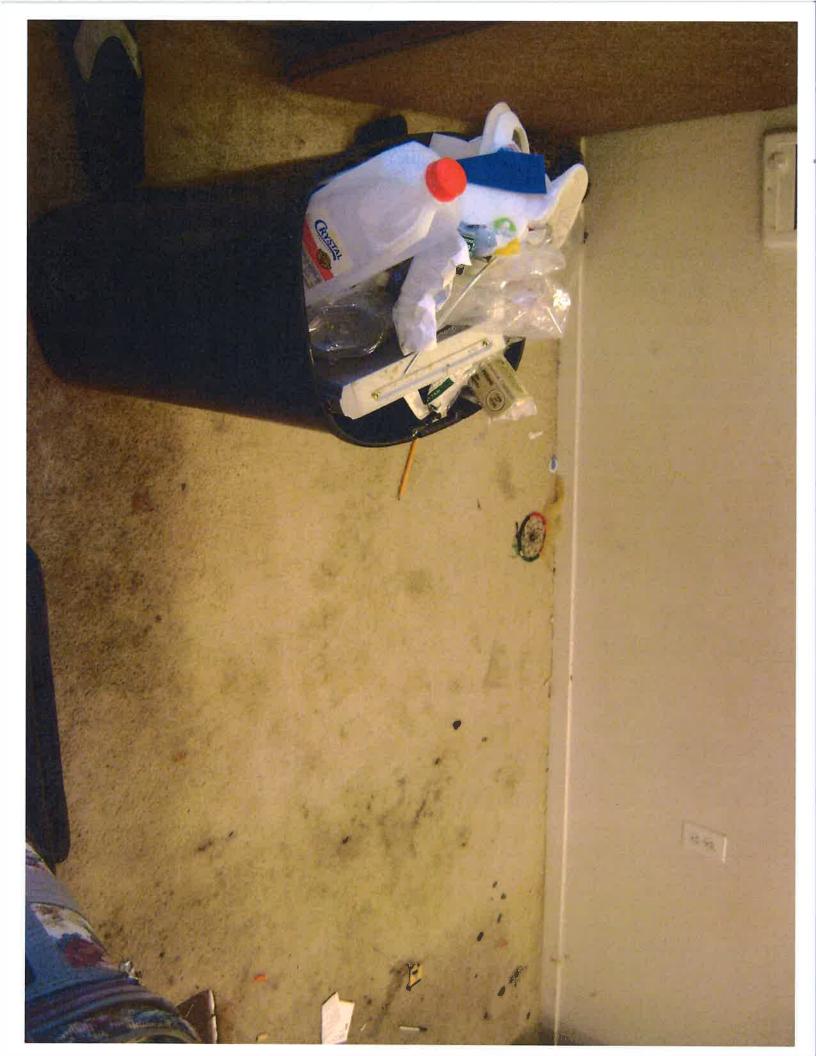
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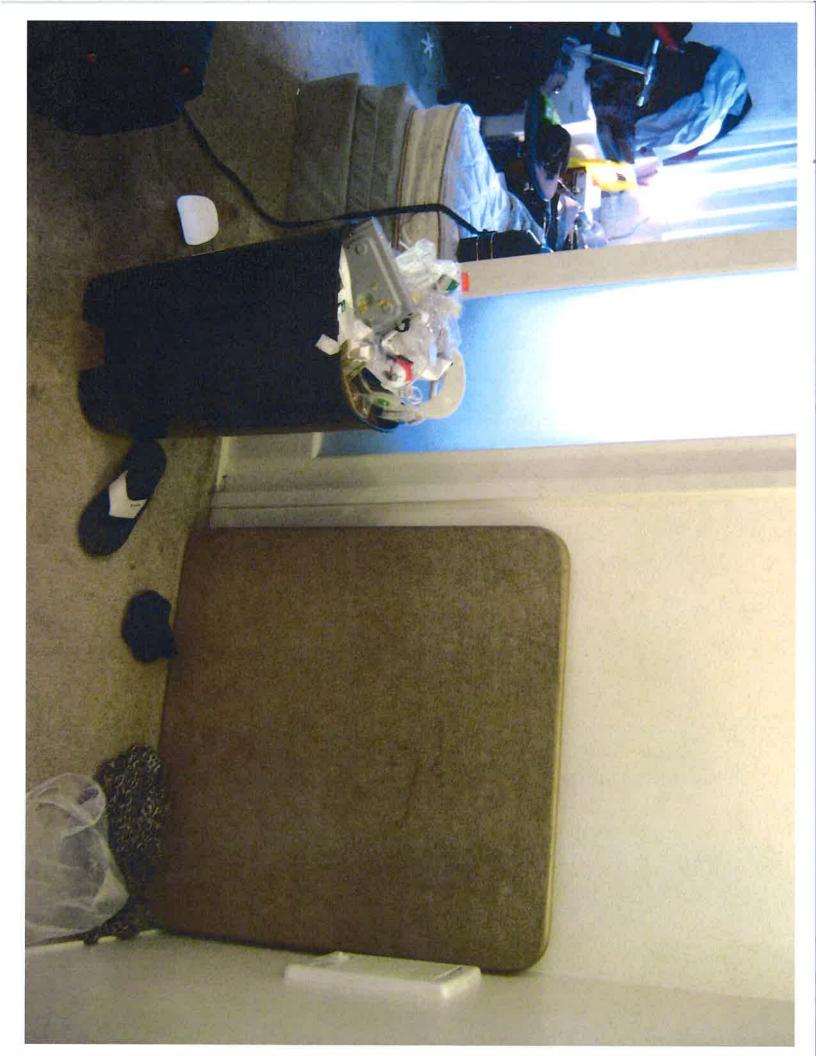
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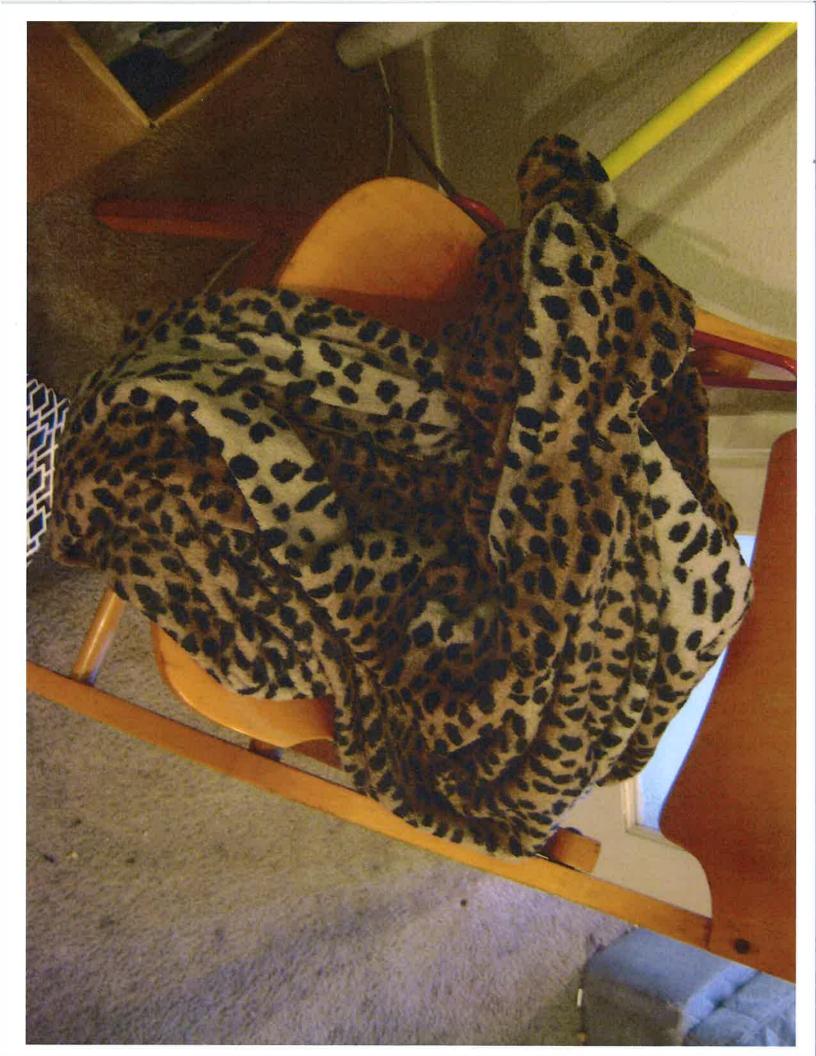












Berkeley Police Department Patrol Sergeant's Daily Report

Sergeant	Date	Day	Division	Team
Cardoza / Ross	02-12-13	Tues	Patrol	3

Deployment	Planned	Actual	Exceptions
Supervisors	2	2	
Officers	10	10	
Inspection			
Training			

Equipment inspection / problems.

Directed Enforcement:

Attempt PC 211 strong Arm

1300 Virginia,

13-8466 / 1853 hrs

SU#1. BF, 16-18, 5'5", 125, shoulder length hair, wearing a red jacket.

SU#2. BM, 16-18, 6', 170, wearing a red jacket

SU#3. BF, NFD

SU#4. BM, NFD

Prior to 1853 hrs. a female pedestrian was walking E/B on Virginia near the Berkeley Adult School. (4) individuals walked towards her from the east. Suspect #1 immediately sprayed her in the face with pepper spray. Suspect #1 then said, "Drop your bags, you need to drop your bags." The victim ran away from the suspects and they chased her. The victim ran to a bystander and asked for help at which time the suspects turned and fled in an unknown direction.

Disturbance / In Custody Death

2116 Allston Wy. #514

13-8510 2349 Hrs

IP: Moore, Xavier Christopher. BM 04-17-71 2116 Allston Wy. #514 PFN ATH177

On the above date and time BPD responded to 2116 Allston Wy. Apartment #514 for a report of schizophrenic off of his medication, and drinking alcohol. Upon arrival officers made contact with the reporting party in front of the address. Officers initiated contact with Moore in the doorway of the apartment. During the contact, Moore became increasingly agitated, and made numerous paranoid, rambling statements. Moore repeatedly stated that he was being followed by the FBI, and that he did not believe that the officers were real police officers.

Officers asked Moore to come outside to speak to her. Moore agreed, and stepped outside of the apartment onto the exterior walkway. Officers then informed Moore that he was being detained for a warrant. Moore became extremely upset and was unresponsive to verbal commands. During the detention Moore immediately began screaming and violently pulling away, and then ran back into the apartment, pulling officers in with him.

Moore continued to actively resist officer's attempts to detain him in handcuffs. Officers called for Code-3 cover, and several other BPD units responded to assist. Moore continued to violently resist by trying to buck officers off of him, kicking, and trying to pull his arms away from. After struggling for several minutes, officers were able to gain control of Moore's arms and place him in handcuffs.

After being secured in handcuffs, Moore continued to scream and kick for a short period of time before appearing to calm down. Once he calmed, He was rolled onto his side, and officers confirmed that he was breathing and had a pulse. Approximately one minute later officers reported that Moore was no longer breathing and no longer had a pulse. Officers initiated CPR on Moore. Officers were relieved by BFD paramedics at the scene. BFD transported Moore to ABH where he was pronounced deceased at approximately 0134 hrs of an unknown medical condition.



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Title:

March Against Berkeley Police

START DATE:

Tuesday March 12

TIME:

6:30 PM - 8:30 PM

Location Details:

People's Park, Berkeley, CA

Event Type:

Protest

On February 12th Berkeley Police murdered Xavier Moore. Xavier Moore lived with "mental illness" and has been described by friends and family as a Transgender person who "passed as a woman."

From Berkeley Copwatch:

"The BPD's press release of February 13th says that they responded to "a disturbance call" at Moore's apartment. Media reports have said this call was related to mental health. If she was going through a mental health crisis, was anyone present trained to respond to that kind of situation, to evaluate, and deescalate? According to an article from February 26th in the Oakland Tribune: "Berkeley: Man who died after struggle with police was severely mentally ill," rather than take her to a hospital for psychiatric evaluation, when they found out she had an outstanding warrant in San Francisco, they told her they were going to arrest her.

An article in the San Francisco Chronicle dated February 13th "Man dies in struggle with Berkeley police," mentions "a disturbance between roommates," as causing the police to arrive. The Daily Californian February 14th article "Man dies after being taken into police custody," says that other residents heard a "commotion on the fifth floor of the building before the officers arrived on the scene." None of the witnesses we spoke to heard any sort of commotion or disturbance until after the police arrived. Why the consistent difference? In fact, the police were at Moore's apartment twice that night. This isn't mentioned at all by the police or media reports. The police first showed up around 11:00pm, and left without incident. The incident resulting in Moore's death was the second police visit, occurring around 11:50pm. According to witnesses, when they returned a second time, there was a sizable police presence. Why did they come back an hour later with so many officers? What were they preparing to do?"

Nearly one month later and the Berkeley Police still have not released information as to the cause of Xavier's death, leaving most questions unanswered. However we do know that there was no commotion or overt disturbance prior to BPD's arrival. We know when Berkeley Police arrived at Xavier's home, for the second time in one night, they had police back-up but they did not have a mental health mobile crisis team with them. We know Xavier was alive and not on the verge of death prior to the arrival of the Berkeley Police. We know police regularly murder people of color, gender-variant people, and people with "mental illness." We also know only one Police Officer in California has been convicted in the death of a civilian and his charges were brought only after massive riots swept Oakland.

Unfortunately Xavier's death is not an anomaly. This past weekend Bay Area Police have murdered four people and watched one woman bleed to death after she was attacked by her abusive ex-husband.

San Francisco Police murdered Aaron Sawyer (23) after he allegedly stole a car on Saturday morning. San Jose Police murdered a man yet to be identified after

Berkeley: Man dies after struggle with police

By Doug Oakley Oakland Tribune San Jose Mercury News Posted:

MercuryNews.com

BERKELEY -- The Alameda County coroner is investigating after a 41-year-old man died while being taken into police custody for an involuntary psychiatric hold Tuesday night, officials said Wednesday.

Police said they responded to a call just before midnight about a person who may have been having mental health issues at an apartment building in the 2100 block of Allston Way.

When police attempted to talk to the man, he became "agitated and uncooperative to the officer's verbal commands and began to scream and violently resist," according to a statement from Berkeley police.

A struggle ensued, police said, and they were able to place the man in restraints, but he continued to kick and scream. After being loaded onto an ambulance gurney, police said they noticed he was not breathing, and they began CPR. He was taken to a hospital and pronounced dead, police said.

Police did not identify the man, and Sgt. Patricia Wilson of the coroner's office said the Berkeley Police Department has a hold on the case.

Police said the death will be investigated internally and they will notify the Alameda County District Attorney's Office.

Wilson said investigations into deaths that occur in police custody are handled like any other "unnatural" death and do not include special protocols.

Speaking in general about coroner's investigations, she said the department can perform autopsies, interview witnesses, take photographs, review police reports and review the person's previous medical records.

Wilson said some reports can take up to a year to complete.

Doug Oakley covers Berkeley. Contact him at 510-843-1408. Follow him at Twitter.com/douglasoakley.

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A man who died after being detained by Berkeley police officers on Feb. 12 has been identified by authorities.

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LAST UPDATED FEBRUARY 21, 2013

confirmed that the man was 41-year-old Xavier Christopher Moore.

On the date of his death, officers were called to the Gaia Building apartment complex on the 2000 block of Allston Way after receiving calls about a person with possible mental health issues, according to a statement from BPD.

Residents of the complex reported that they heard a commotion on the fifth floor of the building before officers arrived.

When officers came to the scene, they spoke with the reporting party, who directed them to Moore's residence.

Moore became agitated when officers attempted to talk to him, and a struggle ensued.

"(He) became increasingly agitated and uncooperative to the officer's verbal commands and began to scream and violently resist," according to the statement. "After struggling with officers, they were able to gain control of the subject and place him in restraints."

Moore continued to struggle with officers after being placed in restraints. Authorities then had to call Berkeley Fire Department in for a gurney to transport Moore due to his large stature, according to the statement.

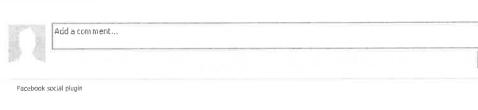
After being loaded onto the gurney, officers noticed that Moore was not breathing and began to perform CPR. He was then transported to a local hospital, where he was later pronounced dead.

As the incident is still under investigation, Moore's cause of death is being withheld, according to Officer Jennifer Coats, spokesperson for Berkeley Police Department.

Andy Nguyen is the lead crime reporter. Contact him at anguyen@dailycal.org.

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Comments

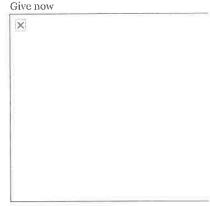


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Man who died in police custody ID'd as 41-year-old Berkeley man

By Kristin J. Bender Oakland Tribune Contra Costa Times Posted:

InsideBayArea.com

BERKELEY -- The Alameda County Coroner has released the name of the 41-year-old man who died in police custody last week while being taken to a hospital for an involuntary psychiatric evaluation.

Xavier Christopher Moore, of Berkeley, died after a struggle with Berkeley police around midnight on Feb. 12, authorities said.

Police had been called to an apartment building in the 2100 block of Allston Way and when police tried to speak to him, he became agitated and uncooperative and violently resisted police orders, police said.

When police placed him in restraints, he continued to kick and scream and was loaded onto an ambulance gurney.

It was then that police said he stopped breathing and they began CPR. He was taken to a hospital and pronounced dead, police said. A cause of death has not been determined, a coroner's spokesman said Friday.

The case remains under investigation. Coroner's office Sgt. Patricia Wilson said investigations into deaths that occur in police custody are handled like any other unnatural death and do not require special protocols.

Reach Kristin J. Bender at kbender@bayareanewsgroup.com. Follow her at Twitter.com/kjbender.

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Friday March 01, 2013

THE BERKELEY DAILY PLANET

FRONT PAGE COLUMNISTS ARTS & EVENTS THE WEEK FULL TEXT

Page One

Berkeley Community Groups Concerned about Death of Mentally Ill Man in Police Custody

By Jeff Shuttleworth (BCN) Friday March 01, 2013 - 02:35:00 PM

Members of several community groups raised concerns today about the way the Berkeley Police Department handled an incident with a mentally ill man who died in a struggle with officers two weeks ago.

George Lippmann of the Coalition for a Safe Berkeley said Xavier Moore, 41, "had a history of mental health issues" but witnesses allege that the level of force used by officers when they confronted him at the Gaia Building in the 2100 block of Allston Way shortly before midnight Feb. 12 "seemed excessive."

Speaking at a news conference outside police headquarters, Lippmann said, "The community is in shock over his death and is gravely concerned about the lack of information" about it.

Lippmann said, "No police reports have been released but there's a lot of speculation and it looks like something went very wrong."

Berkeley police said the day after the incident that they went to Moore's home on a disturbance call and during the contact Moore "became increasingly agitated and uncooperative to the officer's verbal commands and began to scream and violently resist."

Police said officers eventually gained control of Moore and placed him under restraints but while he was under the restraints he wasn't breathing. Police said officers performed CPR on Moore and he was transported to a local hospital, where he was pronounced dead.

Andrea Pritchett of Berkeley Copwatch said she's been told Moore had a drug problem and was a transgender person who lived as a woman. She said, "We fear that the Berkeley Police Department has lost its way in dealing with transgender people."

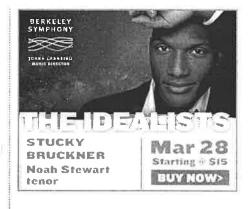
Veena Dubal, a member of the Berkeley Police Review Commission, who emphasized that she was speaking as a community member and not for the commission, said there has been "a lack of transparency" in the way the city's Police Department has handled the situation and Moore's death "is still shrouded in mystery."

Dubal said at the commission's meeting Wednesday a police representative declined to answer a series of basic questions such as whether mental health professionals were called in to respond to the confrontation with Moore and how the investigation into the matter is being conducted.

Berkeley police spokeswoman Jennifer Coats wasn't immediately available for comment today.

Coats said in a statement Wednesday, "There are significant constrains in place regarding the immediate release of information in a case such as this and we can't comment on specific information or even address inaccuracies which may be expressed in public discussion regarding this incident."

Coats said, "A thorough investigation takes time. We are obliged to wait for the evidence to be examined, the facts to be determined and the investigation to be completed."





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Berkeley: Man who died after struggle with police was severely mentally

By Doug Oakley Oakland Tribune Contra Costa Times Posted:

InsideBayArea.com

BERKELEY -- The stepmother of a severely mentally ill man who died after a struggle with police in his downtown apartment Feb. 12 wants to know if officers handled the situation appropriately given his well-known problems.

Police have released few details, citing an ongoing investigation.

Elysse Paige-Moore, who said she cared for 41 year-old Xavier Moore along with his father since Moore was a child, is devastated.

"I don't know if it was my son's time to die, or if he was not handled with the level of care he deserved," said Paige-Moore of Berkeley on Monday. "I still don't know what happened. There have been no police reports, but there's been a lot of speculation. There have been some things that went very wrong, and I would like more information."

Paige-Moore said at first she had no reason not to believe the police version of the story "and what went down," given Moore's physical and mental health history.

Her stepson, who weighed 347 pounds, was paranoid schizophrenic, a heavy smoker and used alcohol, crack cocaine and methamphetamine, she said. He also was transgender and passed as a woman, she said.

But after thinking about what police told her of the incident in his apartment in the Gaia Building on Allston Way, she wants more answers.

Berkeley police have said little publicly about Moore's death, except that they responded to a disturbance and contacted Moore who became agitated and started to scream and violently resist. Police said they struggled with him, and they were able to put him in restraints and put him on an ambulance gurney. But then they saw he was not breathing and began CPR. He was taken to a hospital where he was pronounced dead.

The Alameda County coroner is investigating but has not determined a cause of death pending toxicology tests.

Paige-Moore said police told her someone in the building called 911 about a disturbance shortly before midnight.

She said she learned from police and two house guests that when police arrived, they originally were going to take him to Alta Bates hospital in Berkeley for a psychiatric evaluation, but then they discovered an

http://www.insidebayarea.com/ci_22671948/berkeley-man-who-died-after-struggle-police-was?sou... 3/5/2013

outstanding warrant for assault from San Francisco, and police told him they would have to arrest him. At that point he became combative, she said.

"The police told me he might have been on meth, and his guests told me that and that he was agitated and that doesn't surprise me," Paige-Moore said. "What doesn't add up is he suddenly stopped breathing and that coincided with them having to restrain him."

Paige-Moore said her son's house guests told her they did not believe police should have used the level of force they did.

In addition to more details from police on exactly what happened, she wants to know if police used the correct level of force to bring him under control and if they brought along a mental health professional skilled at de-escalation techniques as they did the many times in the past when they came to her home when Moore was living with her and her husband.

"Anytime Berkeley police came down here to our home, they always had the mental health mobile crisis team with them, " Paige-Moore said. "I'm pretty sure they didn't this time. He may have recognized them (and calmed down) if they did."

Berkeley Police Capt. Andrew Greenwood on Monday declined to say whether police showed up to the disturbance with a mental health professional, citing the ongoing investigation.

Harry Stern, a lawyer who represented the Berkeley police officers on the scene that night who were interviewed the next day by police department investigators, said police did not use their batons or pepper spray and "showed a great deal of restraint."

He said they did use simple "control holds," physical force and a wraparound restraint device on his legs.

"Everyone's heart goes out to the family, and several of the officers specifically say that," Stern said. "Any time there's a loss of life it's traumatic to the people related to the person involved and also to the officers."

Still Paige-Moore said her son was well-known to police, and she hopes they did everything they could given his documented mental health issues.

"Usually he would go pretty quietly," Paige-Moore said. "They knew he was very mentally ill; they should have known that."

Doug Oakley covers Berkeley. Contact him at 510-843-1408. Follow him at Twitter.com/douglasoakley.

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Berkeley community groups raise concern about death of mentally ill man

BERKELEY, Calif. —

Members of several community groups raised concerns Thursday about the way the Berkeley Police Department handled an incident with a mentally ill man who died in a struggle with officers two weeks ago.

George Lippmann of the Coalition for a Safe Berkeley said Xavier Moore, 41, "had a history of mental health issues" but witnesses allege that the level of force used by officers when they confronted him at the Gaia Building in the 2100 block of Allston Way shortly before midnight Feb. 12 "seemed excessive."

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Police said officers eventually gained control of Moore and placed him under restraints but while he was under the restraints he wasn't breathing. Police said officers performed CPR on Moore and he was transported to a local hospital, where he was pronounced dead.

Andrea Pritchett of Berkeley Copwatch said she's been told Moore had a drug problem and was a transgender person who lived as a woman. She said, "We fear that the Berkeley Police Department has lost its way in dealing with transgender people."

Veena Dubal, a member of the Berkeley Police Review Commission, who emphasized that she was speaking as a community member and not for the commission, said there has been "a lack of transparency" in the way the city's Police Department has handled the situation and Moore's death "is still shrouded in mystery."

Dubal said at the commission's meeting Wednesday a police representative declined to answer a series of basic questions such as whether mental health professionals were called in to respond to the confrontation with Moore and how the investigation into the matter is being conducted.

Berkeley police spokeswoman Jennifer Coats wasn't immediately available for comment today.

Coats said in a statement Wednesday, "There are significant constrains in place regarding the immediate release of information in a case such as this and we can't comment on specific information or even address inaccuracies which may be expressed in public discussion regarding this incident."

Coats said, "A thorough investigation takes time. We are obliged to wait for the evidence to be examined, the facts to be determined and the investigation to be completed."

JUNYBAY. ORS

Death In Custody: Berkeley PD Not Forthcoming with Information

by Berkeley Pirate Party
Thursday Feb 28th, 2013 11:56 AM

Berkeley police chief Michael Meehan was not present at the police review commission to discuss the death of Xavier Moore, who died in police custody the night of Feb 12th. Lt Greenwood was instead at the meeting to represent the police. No new information was given to the review commission, leaving basic questions regarding the incident unanswered.

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xaviermoore.wmv (225.9MB)

Basics facts of the case regarding Xavier Moore remain unclear. The police did not clarify if Xavier Moore was being detained for a medical/psychiatric evaluation, if Moore was being detained for refusing to follow police orders, or for an outstanding warrant. It is unknown if someone from the department who has crisis intervention training responded to the scene.

The initial information released by Berkeley police stated that Moore became violent, but no elaboration has been given. It is unknown what level of force the police used to counter the alleged violence by Moore.

It is unknown if Moore was detained through a "face-down take-down", which places the detainee on their chest and can inhibit breathing.

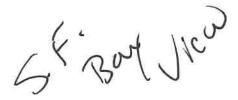
It is unknown if the officers involved with the detention of Moore are currently on duty, or if they were placed on leave pending investigation. It is unknown how many officers responded to this situation.

The Berkeley police is investigation itself. Other than an Alameda County coroner's examination, it is not clear that any outside agency is investigation the death in custody.

The Berkeley police did not clarify what legal standards it is using as per withholding information about the case from the police review commission and general public. There is no request for the names of the police officers involved in the case; there is only request for general information on what happened, and how the investigation into the death is being handled.

The issue of gender identity has yet to be resolved in the case of Xavier Moore. While the police referred to Moore as a large man, and Moore's stepmother referred to Moore as her son in the press, it is believed that Xavier Moore was living as a transgender female (keeping the name Xavier). The issue of gender identity may have come up during the police's presence at Moore's residence. The police may have referred to Xavier with pronouns which Moore did not identify with, adding to tension between Moore and the police.

Two weeks after the death of Xavier Moore, the community knows nothing more than the initial vague report that the death took place in police custody. It was noted at the meeting that there are concerns in the community that the Berkeley police withholds information to the public to keep down controversy and to avoid heated criticism.



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Berkeley coalition demands access to information about death in police custody

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February 28, 2013 Like 33 Tweet 3

by Berkeley Copwatch

Xavier Christopher Moore died Feb. 12 during a situation we believe was instigated by the Berkeley Police Department, at her apartment on the fifth floor of 2116 Allston Way, the Gaia Building. Moore has been referred to as a man in police and media reports, but Moore lived her life as a woman, so out of respect we will refer to Moore as "she."

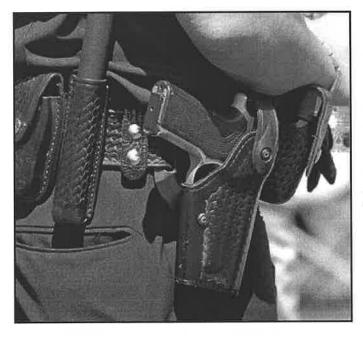


Photo: Shutterstock/Trinacria

The BPD's press release of Feb. 13 says that they responded to "a disturbance call" at Moore's apartment. Media reports have said this call was related to mental health. If she was going through a mental health crisis, was anyone present trained to respond to that kind of situation, to evaluate, and deescalate?

According to an article from Feb. 26 in the Oakland Tribune, "Berkeley: Man who died after struggle with police was severely mentally ill," rather than take her to a hospital for psychiatric evaluation when they found out she had an outstanding warrant in San Francisco, they told her they were going to arrest her.

An article in the San Francisco Chronicle dated Feb. 13, "Man dies in struggle with Berkeley police," mentions "a disturbance between roommates" as causing the police to arrive. The Daily Californian Feb. 14 article, "Man dies after being taken into police custody," says that other residents heard a

[&]quot;commotion on the fifth floor of the building before the officers arrived on the scene."

None of the witnesses we spoke to heard any sort of commotion or disturbance until after the police arrived. Why the consistent difference? In fact, the police were at Moore's apartment twice that night. This isn't mentioned at all by the police or media reports.

The police first showed up around 11 p.m. and left without incident. The incident resulting in Moore's death was the second police visit, occurring around 11:50 p.m. According to witnesses, when they returned a second time, there was a sizable police presence. Why did they come back an hour later with so many officers? What were they preparing to do?

Perhaps the overriding issue here is that the Berkeley Police haven't made any public statement except for their initial press release. The coroner, NOT the police department, released Moore's name.

Can a person die during a contact with police – whatever the circumstances – and the police just don't say anything? Is it because there is an ongoing investigation? Nonsense. When the police don't release this basic information, something is very wrong. It greatly restricts the potential for accountability.

This gross situation is partly a result of a lack of police oversight in Berkeley. The effectiveness of the Police Review Commission has decreased, and police responses to situations have become increasingly violent. The situation for people of color, young people, houseless people and those on the margins has steadily deteriorated in recent years.

Likewise, our ability to bring issues to the attention of the Police Review Commission and to have cases heard fairly has decreased. New regulations that are completely biased against complainants make it almost impossible to sustain complaints against a police officer. We can expect more tragic incidents of this kind if nothing changes.

We believe that an unarmed, obese and schizophrenic woman in her own home should have been responded to by, if anything, mental health professionals, NOT armed police.

According to the Feb. 26 article in the Oakland Tribune, the police "originally were going to take him to Alta Bates hospital in Berkeley for a psychiatric evaluation, but then they discovered an autotanding warrent for assemble from San Francisco.



Xavier Christopher Moore, a transgendered woman, died after a violent struggle with Berkeley police at her home in the Gaia Building, 2116 Allston Way, Berkeley, near midnight on Feb. 12, 2013. Police say they were responding to a call for a mental health evaluation, but they have not disclosed the caller's identity.

outstanding warrant for assault from San Francisco, and police told him they would have to arrest him. At that point he became combative, she (Elysse Paige-Moore, Xavier's stepmother) said."

Was it really more important to arrest her than to deal with a psychiatric episode that may have brought them there in the first place?

We believe there needs to be an open people's investigation. We do not believe the police or the district attorney are concerned with conducting an impartial investigation. We will evaluate the circumstances of this case ourselves.

Berkeley Copwatch is calling immediately for the following:

- 1. Access to dispatch records to determine what the police who responded to the call were told before they arrived. A Public Records Act request has been filed regarding this, and we expect documents to be released in full and without delay.
- 2. Access to all police reports, witness statements and information related to this case.

According to an article at Salon.com from Dec. 10 of last year, "Half of people shot by police are mentally ill, investigation finds," not only are many people who are killed by the police mentally ill, but police aren't properly trained in how to deal with mental illness. Another article, in Bloomberg.com Dec. 27 of last year, "Bullets are safety net as 64 mentally ill die at hands of police," states that the number of mentally ill people killed by the police increased threefold from 2009-2012.

The police version of this entire story does not match reports of witnesses and is suspicious in and of itself. The silence around this incident is of great concern.

Berkeley's is the original Copwatch, founded in 1990. The Northern California Society of Professional Journalists will award Berkeley Copwatch one of its James Madison Freedom of Information Awards on March 12. They can be reached at berkeleycopwatch@yahoo.com.

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http://www.berkeleyside.com/2013/02/13/officials-examine-death-during-berkeley-police-response/

Man dies after struggle with Berkeley Police

Emilie Raguso

Authorities are investigating the death of a man who stopped breathing after a violent struggle with police Tuesday night, officials said.

According to a statement released by the Berkeley Police Department just after 4 p.m., authorities were dispatched to the 2000 block of Allston Way for a mental health evaluation at about 11:50 p.m. Tuesday.

"Upon arrival, uniformed officers spoke with the reporting party and were directed to the 41 year old male subject's residence nearby," according to the statement. "During the contact, the subject became increasingly agitated and uncooperative to the officer's verbal commands and began to scream and violently resist. After struggling with officers they were able to gain control of the subject and place him in restraints. The subject continued to kick and scream at officers."

Police said that, due to the man's "large stature," officers asked the Berkeley Fire Department for a gurney to help transport him "for further evaluation." Police declined to release additional details about the man's height or weight.



Berkeley Police Department, Photo: Kaia Diringer

"While under restraint officers determined the subject was not breathing and immediately began CPR," according to the statement. The Berkeley Fire Department took the man to a local hospital, where he was pronounced dead.

Police notified the district attorney's office, and the case is being investigated by the Detective Division, according to department policy. Also per department policy, the police officers who responded to the call have been placed on administrative leave, said officer Stephanie Polizziani of the Berkeley Police Department.

Sgt. Patricia Wilson of the coroner's office said she did not have details on the case. Generally speaking, she said, it would be investigated in the same manner as any death in Alameda County that is considered "unnatural."

Those types of investigations include consolidating reports from law enforcement agencies, reviewing the medical history, putting together a case file and interviewing witnesses.

"We don't do anything specific for law enforcement-involved cases," she said. "We investigate all deaths from the same perspective."

http://www.berkeleyside.com/2013/02/22/name-released-after-death-in-custody-cause-still-unknown/

Name released after death in custody, cause unknown

Emilie Raguso

Authorities have released the name of the person who died in custody on Feb. 12 — after police were called to a downtown Berkeley apartment building for a mental health evaluation — as Xavier Christopher Moore.

Moore was a 41-year-old Berkeley resident, according to the Alameda County coroner's office, which released Moore's name earlier this week.

Moore's cause of death has not been determined, according to the coroner's office, and has been deferred pending toxicology testing. (Toxicology reports can take weeks or months to complete.)

According to the Berkeley Police Department, Moore stopped breathing while under restraint after struggling with police.

According to a statement released Feb. 13, police said they were dispatched to the 2000 block of Allston Way for a mental health evaluation. Once there, they spoke with the reporting party, then were directed to Moore's residence. (Media reports have identified Moore's residence as the Gaia Building at 2116 Allston Way, but police have declined to confirm the exact location.)

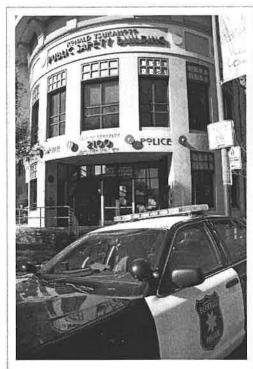


Photo: Kara Diringer

"During the contact, the subject became increasingly agitated and uncooperative to the officer's verbal commands and began to scream and violently resist. After struggling with officers they were able to gain control of the subject and place him in restraints. The subject continued to kick and scream at officers," according to the statement.

Police said that, due to the man's "large stature," officers asked the Berkeley Fire Department for a gurney to help transport him "for further evaluation." Police declined to release additional details about the man's height or weight. "While under restraint officers determined the subject was not breathing and immediately began CPR," according to the statement.

Last weekend, Berkeley Copwatchbegan raising concerns about the death, identifying the person who died as a transgendered woman of color. The group scheduled a meeting for last Monday, noting: "We need allies to come so we can ... find out why a mental health call became lethal."

Andrea Pritchett, a founding member of the volunteer group, said Friday that members of Copwatch had interviewed residents in the same building as the person who died, who identified that person as a woman.

(The Berkeley Police Department and the Alameda County coroner's office said they could not comment on whether the person who died may have been transgender.)

Pritchett said the group is concerned with the "lack of information" provided by police, and said Copwatch has filed public records requests for the police report, name of the person who died and any identifying information, as well as information from the Department of Mental Health and the Berkeley Fire Department.

Pritchett said the public deserves to know more about how authorities responded to the call, and how the person who died was restrained. She'd also like to know if police used pepper spray, or tried to begin with a "less aggressive interaction," such as sending a mental health professional to Moore's door rather than a uniformed police officer.

"We need an investigation so we can review Berkeley's emergency crisis response to mental health issues," said Pritchett.

Berkeley Police Capt. Andrew Greenwood said Friday, via email, that police "have no further information to share at this time" because the "specific circumstances of the in-custody death are still under investigation."

Greenwood pointed to the Police Department's "long history of working with respect and sensitivity to mental health issues in our community and among people with whom we come into contact." He said the department has "a positive reputation in community" for mental health-related interactions.

Greenwood also said the department has worked closely for more than 20 years with the city's Mobile Crisis Team, which is part of Berkeley's mental health division: "Through this close and frequent collaboration, our officers are well aware of the impact of mental health issues on the actions of people in our community."

The department also is launching a new program to handle crisis response, which will be developed throughout the year, he said.

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http://www.berkeleyside.com/2013/02/28/berkeley-police-release-statement-on-in-custody-death/

Berkeley Police release statement on in-custody death

Berkeleyside Editors

The Berkeley Police Departmentreleased the following statement Wednesday night regarding the death in custody earlier this month of 41-year-old Xavier Christopher Moore. Three community groups have planned a press conference for Thursday, Feb. 28, at 10 a.m. to express concerns about the death and ask for more information. (Scroll down for details.) Moore's stepmother, Elysse Paige-Moore, told Berkeleyside that "it's been a horrible, horrible time for the family, really quite devastating. My husband and daughter have gone through an extraordinary level of grief. This has been a 40-year battle to protect my child who has serious biologic mental health problems." She also expressed remorse that "the laws didn't allow us to do more to care for and protect him."



BERKELEY POLICE STATEMENT ON XAVIER MOORE (REPRINTED IN ITS ENTIRETY)

We received some additional inquiries regarding the recent death of a person during contact with our officers. Though we are limited in terms of sharing specific details of this ongoing investigation, we wanted to offer some context where we can, as hopefully this may be of some use to you.

We understand the community's concern over this incident, and the desire to have as much information about this incident as possible.

As you may know, any investigation involving a death such as this includes thorough and detailed interviews with all witnesses and involved parties, the collection and analysis of all available evidence, and preparation of appropriate reports. The Alameda County Coroner's office is conducting their concurrent death investigation as well.

There are significant constraints in place regarding the *immediate* release of information in a case such as this, and we can't comment on specific information or even address inaccuracies which may be expressed in public discussion regarding this incident.

The Berkeley Police Department has a long history of working with respect and sensitivity to mental health issues in our community and among people with whom we come into contact. Our department has a positive reputation in the community for its interactions with mental health consumers.

Furthermore, we are increasing our level of service and expertise in this area through our Department's new Crisis Intervention Team (CIT) program. This program is based on a national, best-practices model for police interactions with people with mental health issues. These training efforts, and the expansion of the program, are continuing throughout the year.

A thorough investigation takes time. We are obliged to wait for the evidence to be examined, the facts to be determined, and the investigation to be completed.

We are committed to conducting a sensitive and thorough investigation, fair to everyone involved, from the family and friends of the decedent, to the officers and firefighters who tried to save the decedent's life.

STATEMENT FROM COMMUNITY GROUPS ABOUT DEATH IN POLICE CUSTODY (REPRINTED IN ITS ENTIRETY)

Who: Coalition For a Safe Berkeley, Berkeley Copwatch, Amnesty International UCB Chapter

What:Press Conference

Where: 2100 Martin Luther King Jr. Way, Berkeley

When: Thursday, February 28, 2013, 10 a.m.

As details of the tragic death of 41 year old Berkeley resident Xavier Christopher Moore in police custody begin to emerge, residents are asking whythis person died and why police are slow to release information in this case.

According to Berkeley Police, officers were dispatched for a mental health evaluation at about 11:50 pm on February 12, 2013, although neighbors on the same floor heard no disturbance until the police arrived.

After officers appeared at Moore's residence the situation escalated, and shortly thereafter Moore died in police custody. Neighbors observed officers carrying Moore on a gurney, unconscious and in restraints, out of the building. In a city that is known internationally for disability awareness, social consciousness and protection of civil liberties, it is unacceptable that a mental health evaluation should end in death.

We are calling on advocates and individuals in the mental health community, civil and human rights, anti-racism and LGBTQ rights communities to demand answers from the City of Berkeley as to what happened that night. If misconduct has occurred, officers must be disciplined. If it was a failure of policy and administration, the public must be allowed to analyze the case and to assist in addressing this breakdown in city services. In any case, we demand that the Berkeley Police Department comply with Public Records Act requests and that they make information about that night's events available to the public as quickly as possible.

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MONDAY, MARCH 4, 2013

How Did Kayla Moore Die?

Toshio Meronek - Mon, Mar 4, 2013 at 1:31 PM

"She made friends easily, she was very charismatic," said Elysse Paige-Moore of her stepdaughter, Kayla Moore. "It was typical for her to call here five or six times a day, and talk with us. We cared for her dearly. We have no retirement money because we just did what we could for our child. And she loved us."

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Paige-Moore was understandably devastated when she heard that Moore, who was transgender and paranoid schizophrenic, died in Berkeley Police custody in her home on the night of February 12. How she died is still a mystery. "We understand the community's concern over this incident, and the desire to have as much information about this incident as possible," but "a thorough investigation takes time," said Berkeley Police's Public Information Officer, Jennifer Coats, via email in late February.



Copwatch's Andrea Pritchett speaks to press in front of the Berkeley Police Department on February 28.

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It was around 11 p.m. on February 12 when police arrived at Moore's downtown Berkeley apartment to handle a mental health-related disturbance. This first visit was fairly quiet. When the cops left, Moore was still alive in her home.

But then the police returned an hour later, this time with more officers, for what would be the last, apparently terrifying, human interaction of Moore's life. Neighbors at the Allston Way apartment building would later report hearing Moore screaming for several minutes, then an abrupt silence that signaled her death. While we don't know if police were at fault, we do know that, in general, police have a poor reputation when it comes to dealing with people who are transgender and/or disabled. (Though there are countless statistics that show this, here are a couple recent revealing ones: An investigation by two Maine newspapers published in December 2012 found that at least half of the people killed by police in the US each year are mentally disabled; the latest National Transgender Discrimination Survey found that 29 percent of transgender people said they had been verbally harassed by cops.)

According to the *Oakland Tribune*, police "originally were going to take [Moore] to Alta Bates hospital in Berkeley for a psychiatric evaluation, but then they discovered an outstanding warrant for assault from San Francisco." These officers, whose names have not been released, made a fateful decision: to arrest someone who was known by the department to be paranoid schizophrenic, while she was apparently experiencing a psychiatric emergency. When Moore was told she was going to be arrested, she became combative, police told the Tribune. Almost a month after the fact, we don't know much more about that night in February. The coroner's office still hasn't released a cause of death.

At a community meeting on February 28, a member of the Berkeley Police Review Commission, Veena Dubal, spoke about "a lack of transparency" in how the department has managed the situation. Because it has released so little information, a coalition of local organizations (Berkeley Copwatch, Coalition for a Safe Berkeley, and the Amnesty International chapter at UC Berkeley) is in the process of conducting an investigation of their own.

"Bear in mind that she's 347 pounds. It's hard to imagine, to be honest, that she could pose that giant of a threat to the officers," said Andrea Pritchett, an organizer with Berkeley Copwatch. Pritchett is particularly concerned about the amount of time the department is taking with its investigation, as she describes what she sees as the cops' M.O.:

"They circle the wagons, won't let anyone have any information, stall, delay, and hope that public interest dissipates, and that's what we're determined will not happen in this case. It's a sad commentary on the deterioration of police accountability in Berkeley, I think, because Berkeley hasn't been known for these types of incidents, yet they're happening with greater frequency here."

The Bay Area is celebrated for being the one of the world's most accessible place for people with disabilities. But, as Pritchett said, "There's this larger question of how police just kind of get to assassinate, 'put down', terminate mentally ill people. The interaction between the police department and the mental health department in incidents involving people with psychiatric emergencies is really important." In Moore's case, it seems the mental health part of the equation wasn't there. Mental health emergencies "don't always happen during business hours. This episode, if it was an episode, was happening between eleven and midnight. So does that mean if someone's

having a [psychiatric emergency] they're not going to get any kind of services from our city, and so we're just going to let police with guns handle it?"

Media reports have mentioned Moore's drug use, but it's unclear what role, if any, her drug usage played in her death. "People get confused between drug addiction and mental health issues," said Paige-Moore. "When you see a drug addict, don't judge what you don't know, and understand that if a mentally ill person dies of a drug overdose, or drugs are a contributing factor, don't make assumptions about their character. They were doing the best they could do."

Moore's stepmother and neighbors confirmed that she identified as a woman, although in media reports and Berkeley Police Department press releases and statements about the case, she's referred to as he and him, a marked sign of disrespect to someone who likely had to fight every day to be understood as female. Back in 2001, Berkeley became one of the first cities in the United States to offer transgender sensitivity training to officers, but when something as basic and vital as using the correct language to talk about someone is disregarded, it's a symptom that these trainings have failed.

At a February 28 press conference, the public coalition released this statement

"The effectiveness of the Police Review Commission has decreased, and police responses to situations have become increasingly violent. The situation for people of color, young people, houseless people and those on the margins has steadily deteriorated in recent years.

Likewise, our ability to bring issues to the attention of the Police Review Commission and to have cases heard fairly has decreased. New regulations that are completely biased against complainants make it almost impossible to sustain complaints against a police officer. We can expect more tragic incidents of this kind if nothing changes.

We believe that an unarmed, obese and schizophrenic woman in her own home should have been responded to by, if anything, mental health professionals, not armed police."

While we don't know how Moore died, we do know that uncountable disabled and transgender people suffer and die in police custody. We do know that in Berkeley, as in most cities, the numbers are against them: the City of Berkeley's budget for 2013 appropriates \$58.5 million for the police department, while health services is set to receive less than half of that, of which just a fraction goes to mental health services. We also know that reactive responses from police cost more than proactive health services - both in terms of money and

Calling Moore by her preferred pronoun is the least we can do. What we also must do is reconsider our ideas around what constitutes public safety, or else our government agencies will continue to be implicated in the mistreatment of people like Kayla Moore.

Tags: Kayla Moore

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